S. HRG. 108–096

THE POTENTIAL BURDENS ASSOCIATED WITH THE NEW COUNTRY-OF-ORIGIN LABELING (COOL) LAW

HEARING

BEFORE THE

SUBCOMMITTEE ON MARKETING, INSPECTION AND PRODUCT PROMOTION

OF THE

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

UNITED STATES SENATE

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THE POTENTIAL BURDENS ASSOCIATED WITH THE NEW COUNTRY-OF-ORIGIN LABELING (COOL) LAW

TUESDAY, APRIL 22, 2003

U.S. SENATE,
SUBCOMMITTEE ON MARKETING, INSPECTION, AND PRODUCT PROMOTION, COMMITTEE ON AGRICULTURE, NUTRITION AND FORESTRY,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in the Mills Anderson Justice Center Auditorium, Missouri Southern State College, Joplin, Missouri, Hon. James M. Talent presiding.

Present or submitting a statement: Chairman Talent.

STATEMENT OF HON. JAMES M. TALENT, A U.S. SENATOR FROM MISSOURI

The CHAIRMAN. The subcommittee will come to order. This is an on-the-record hearing of the Subcommittee on Marketing Inspection and Product Promotion of the Committee on Agriculture in the U.S. Senate. It is a great pleasure for me to be here and to welcome our witnesses in the audience.

I want to thank Missouri Southern for providing these great accommodations. It is, as I said, a great pleasure to be here. I am going to explain the procedures a little bit and then make a brief opening statement and then recognize my good friend and colleague, Roy Blunt, in whose district we are now.

Because this is an actual hearing, one of the points here is to collect information on the record with the view for making some recommendation to the Senate later this year. We are constrained at least in some degree by the actual procedures of the Senate.

What we are going to do is, I am going to give an opening statement, which is typical, and then defer to Mr. Blunt who is a guest of the subcommittee today. He can give one if he wants to.

Then we are going to have three panels. The first panel is only one witness, and I will introduce him in just a minute. Then there will be several witnesses on the second panel, and two witnesses on the third panel.

After everybody in each panel has given their statements—and we will encourage the witnesses to be brief with their statements. I have spoken with them, and most of them have done that, then we are going to have an opportunity to ask questions. Then when we finish the three panels, we will be finished with the hearing.

If this were a town hall meeting, or sometimes we will call a less formal meeting, I'd be happy to take questions from the audience. A couple of people have asked me about that. There's no procedure in the Senate which allows us to do that. I will be around afterwards and very willing and eager to visit with people who have forums or concerns.

Because the point here today is to get information about how we are going to implement the Country-of-Origin Labeling law that Congress passed in the Farm bill last year, I did want to get Congressman Blunt to come to the hearing.

In the bill that passed last year, the Department of Agriculture was required to promulgate recommendations for mandatory country-of-origin labeling for beef, pork, lamb, and other fresh commodities by September 30th, 2004.

The official implementation date for mandatory COOL, as we call it, the Country-of-Origin Labeling law, is not until 2004, but the beef, lamb, and pork industries have to prepare now for the auditing and recording provision in the law.

Producers are entitled to know and need to know what they will be expected to provide in order to comply with the law, and that is the reason for the hearing. The research that we have done at this point, and a lot of it is just informal contacts with people from various parts of the industry on different sides of this issue.

I believe that there is still a consensus, as there was last year, that country-of-origin labeling is a good idea, at least in principle. I am a huge believer in value-added enterprises in the agricultural sector. Labeling products as coming from the United States gives us an additional market. In addition, consumers would like to know, conveniently, where their foods come from. I believe that as a consumer. The producers I have talked to also believe that as consumers as well.

The first thing is that there is a consensus that the Country-of-Origin Labeling law is good, at least in principle.

The second thing I want to say is that there certainly is a great deal—there is a great deal of controversy over how this law is going to be implemented. The concern has been raised by producers as well as other parts of the food production chain whether the cost of implementation may not be so great, particularly on producers, as to cancel out part or all of the benefits of the law.

What I want to do is to collect information as, if you will, an honest broker—I don't come into these hearings with any preconceptions—and then forward a recommendation to the Senate.

Earlier this year I sent a letter to Under Secretary Bill Hawks requesting the Department of Agriculture hold a series of listening sessions around the country to give producers an opportunity to share their concerns and to get information about the new regulations. They have agreed to those and, in fact, have begun them. I do want to thank Under Secretary Hawks for that and also for being here today.

I will close by saying I have always been a proponent of value-added agriculture. It is the future of family production. If identifying and labeling beef, pork, lamb and other products means greater profits to the American producers, I will strongly support that.

However, I am also a former chairman of the Small Business Committee, and I do know that new laws and new regulations can bring new regulatory burdens, and often we don't anticipate at the time when we pass the law what the full extent of those burdens are going to be.

I am looking forward to the testimony today, and I am certain that we will all gain a better understanding of what effects COOL is going to have on farmers and consumers here in Missouri and around the United States.

[The prepared statement of Senator Talent can be found in the appendix on page 44.]

With that I am happy to welcome and to recognize my friend and your great Congressman, I will make that editorial comment, and, yes, that is for the record, Congressman Roy Blunt.

STATEMENT OF HON. ROY BLUNT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSOURI

Mr. BLUNT. Senator, thank you for holding this hearing here. Thank you for the interest and the leadership you are showing in this issue. It is a great privilege for us to see you chairing this important subcommittee, and dealing with this issue and bringing this hearing here to Southwest Missouri.

I can certainly argue that based on the dynamics of this entire question, that the Southwest Missouri area may very well be Ground Zero in terms of the long-term impact of what's finally decided by the Senate and the House, and if we have to take further action and more likely what's decided by our friends at the Department of Agriculture.

If you took 100-mile circle almost anywhere in the seven congressional districts, you would find more cows and calves than anywhere else in the United States. Of course, that chain of ownership, the determination of where animals came from starts right there.

Secretary Hawks and I were visiting earlier. We both had experience in the past where we were in the registered cattle business, and both decided somewhere in that process that the ranching business, for us at least, was not worth the effort of identifying which of those were black Angus calves belonging to which of those blank Angus cows. Many others have made that same determination in producing superior quality beef for market.

Lakeland, as you suggested, Senator, is a positive marketing tool and is often used voluntarily by many people who produce products. There is concern about the language in the 2002 Farm bill that I voted for and how that language is implemented. Some of that concern is justified; some of it probably will turn out not to be justified.

That's the purpose of the hearings that you have asked the Department and the Secretary to hold. What we don't want to have here is another example of the law of unintended consequences where we move forward with an idea that has positive merit in terms of marketing and turn it into a nightmare because of the regulations that are established.

The intent of the law is not to create mandated record keeping that challenges the record that you have to do for the IRS. The in-

tent of the law was to use labeling as a marketing tool and not as a way to come up with some regulatory nightmare forcing people out of the market or forcing small owners out of the market for sure.

The statute states that USDA cannot, quote, "Use a mandatory identification system," end quote, to verify origin. What is to be required to document the place of birth of a Southwest Missouri animal—a pig, a cow, a sheep, another animal, a lamb—that would be on the way to market? How do you identify that animal, and how do you identify that animal through the entire chain that eventually winds up at the supermarket or the meat counter?

This and many other questions need to be answered through hearings like this one. I know your good friend and mine, our new agricultural chairman in the House, Chairman Goodlatte, is interested in this as well. Of all of the districts in the country, his district in Southwest Virginia agriculturally is as near to mine as almost any other, a high concentration of beef and poultry, and dairy. He is interested in these topics certainly. I appreciate your interest and was glad to have the opportunity to join you here at this hearing we are having in Southwest Missouri.

The CHAIRMAN. I want to thank Congressman Blunt. Every new law causes some concern because change causes some concern. The thing to do is to find out the extent to which that concern is valid and what, if anything, we need to do about it. That's the purpose of this.

Without any further ado, we will go right to our first panel which consists of one witness, Mr. William. T Hawks, who I will introduce simply as the Under Secretary of Marketing and Regulatory Programs for the Department of Agriculture.

Secretary Hawks, we want to thank you for coming again to Southwest Missouri and this time anticipating testifying formally before the subcommittee. Please give us your statement.

STATEMENT OF BILL HAWKS, UNDER SECRETARY OF MARKETING AND REGULATORY PROGRAMS, U.S. DEPARTMENT OF AGRICULTURE

Mr. HAWKS. Thank you, Senator Talent, Congressman Blunt. It is certainly a pleasure to be in Southwest Missouri for the hearing where the vast majority of these cattle come from. Certainly it is a great place to be.

It is always a pleasure to be out in countryside anytime but a special pleasure to be here today and to discuss the mandatory Country-of-Origin Labeling law. As he said, I am Bill Hawks, Under Secretary for Marketing and Regulatory Programs, and I have the ultimate responsibility of implementing this law.

As you know, the 2002 Farm bill mandated country-of-origin labeling at the retail point of sale for beef, lamb, pork, fish, shellfish, perishable agricultural products as well as peanuts after 2 years. We also want to make clear that the Office of Management and Budget's Statement of Administration Policy on Senate Bill 1731, the Agriculture, Conservation, and Rural Enhancement Act of 2001 found this provision was objectionable, highly objectionable. We felt like there would be some unintended consequences and have some potential impact on trade.

Having said that, I assure you that we at USDA are fully committed to carrying out the intent of this law to the best of our abilities. These provisions are part of the Farm bill, and we are working diligently to implement them.

This program began on October 11, 2002, when we published the "Guidelines for the Voluntary Country-of-Origin Labeling" in the Federal Register. The voluntary guidelines became effective upon publication and are to be used by retailers who wish to notify their customers of country of origin of the covered commodities they purchased prior to the mandatory implementation on September the 30th, 2004.

The Farm bill defines the criteria for covered commodities to be labeled as "U.S. Country of Origin." To receive this label, beef, lamb, and pork must be derived exclusively from animals born, raised, and slaughtered in the United States.

Although the COOL provision of the Farm bill requires that all covered commodities be labeled at retail as to their country of origin and provides a very specific definition of "U.S. Country of Origin," it does not specify how to label imported, mixed, or blended product. Under the COOL requirement, the original country-of-origin identity would need to be carried through to the retail level.

Products with an origin that includes production or processing steps that occur in more than one country would need to bear labels that identify all of those countries. For example, pork from animals born in Canada and raised and slaughtered in the United States would have to be labeled in that manner.

The COOL legislative language does not specify what records are acceptable to verify country of origin claims. It only says that the Secretary may require persons in the distribution chain to maintain a verifiable record keeping audit trail to verify compliance. The law also requires any person in business of supplying a covered commodity to a retailer to provide to the retailer information indicating the country of origin of the covered commodity. At the same time, the law prohibits the Secretary from establishing a mandatory identification system to verify the country of origin of a covered commodity. Therefore, retailers and their suppliers must maintain records that verify the country of origin of covered commodities.

Mr. Chairman, just as I had stated, the Secretary's prohibited from implementing a mandatory identification system. Therefore, AMS has posted on its website examples of documents and records that may be useful to verify compliance with the country-of-origin labeling law, and I would like to submit those from the website for the record.

The CHAIRMAN. The information will be made part of the record.

[The information referred to can be found in the appendix on page 46.]

Mr. HAWKS. The law directs the United States Department of Agriculture to partner with the States to assist in the administration and enforcement of these provisions. As you are aware, the USDA has a long history of working with States, and we proved that working together worked. The State of Florida, for instance, has had a longstanding law of country-of-origin labeling for fruits and vegetables. I was there just week before last, and we have had

people to go and visit. Clearly fruits and vegetables are not as problematic as the labeling of the meat products.

The CHAIRMAN. Mr. Secretary, before you get into the record keeping, let me just clarify a couple things for me, the record and people in the audience of what you just said, including the major exceptions to the law of which are poultry——

Mr. HAWKS. Correct.

Senator TALENT [continuing]. Is not covered under the law. Also, any of the meat that are—or otherwise would be covered with that end up in the food service industry, which is restaurants. I asked this question just informally visiting before, but it is your understanding that a product sold at retail but packaged for the consumer to open up and eat, for example, a dinner that they sell in the deli section of the store—that would be food service and would not be covered?

Mr. HAWKS. That is correct.

The CHAIRMAN. I guess nuts other than peanuts.

Mr. HAWKS. Nuts are still included and would require the country of origin. We also think that if you have mixed nuts, that they bring on another issue. It is contents. It is components of the production.

The CHAIRMAN. OK.

Mr. HAWKS. Thank you, Senator Talent.

The CHAIRMAN. Go ahead with the rest of the statement.

Mr. HAWKS. OK. It is apparent that the country-of-origin labeling would require the maintenance of these records to satisfy these concerns.

On November the 21st of 2002, in accordance with the Paperwork Reduction Act, the Department of Agriculture issued a "Notice of Request for Emergency Approval of a New Information Collection" and record keeping requirement. The costs associated with the new record keeping generated a lot of comments and a lot of concerns. I have said that on any given day I would have one group in my office telling me the numbers were too low. In the afternoon, they would be too high. The next morning, one would be too high, and the next morning it would be too low. Therefore, we extended the comment period for an additional 30 days to have opportunity for everyone to have the input there. We have gone out for public comments on numerous times.

As a matter of fact, I would like to submit for the record these Federal Register notices. The first one is the October 11th, 2002, Notice establishing the voluntary country of origin guidelines. The next one is the November 21st, 2002, Notice for information collection. The next one is the January 22nd extension of the time period for cost estimates on the record keeping component.

The CHAIRMAN. Sure, without objection.

[The information referred to can be found in the appendix on page 53.]

Mr. HAWKS. Once a proposed rule for the Mandatory Country-of-Origin Labeling requirements are drafted and published, we will then formally go out and ask for additional public comment. In addition to that, we will be holding, as you have talked about, the 12 listening sessions around this country. They are about to begin. I will personally be at about half of those. My administrative aide,

A. J. Yates, will be at the other half of those. You can see that we are taking this information gathering very, very seriously. It is certainly incumbent upon us to work with you, the Members of the Congress and the public to try to make sure that anything we do in the Department of Agriculture minimizes the burden on the producers.

Mr. Chairman, in keeping with your time parameters, I will end my comments there and prepare to answer questions.

[The prepared statement of Mr. Hawks can be found in the appendix on page 66.]

The CHAIRMAN. Thank you, Mr. Secretary, and I do appreciate your shortening your statement for the purposes of testimony today. The entire statement, of course, will be put in the record, and I encourage those who are interested to read it, and my office will be happy to make it available.

One thing I want to establish at the outset is that what you have done at this point administratively is very preliminary. I am not going to ask you to go through all the tortuous details as to how you pass a regulation, but that is all your preliminary estimates; is that correct?

Mr. HAWKS. That is correct. I may, just for the record and for your benefit as well, talk a little bit about that regulatory process. From here, as we prepare to do the mandatory regulation, we will be doing an extensive cost benefit analysis. We will work with the economists there in the Department of Agriculture to try to determine the costs associated with country-of-origin labeling. We will be then circulating governmentwide this regulation before it is published in the Federal Register. We will have had then the listening sessions and these sessions that you are doing as we prepare this final mandatory regulation, hopefully later this fall.

The CHAIRMAN. Can you tell me what steps you are taking to make sure that you hear from all sides of this and all sectors of the——

Mr. HAWKS. Yes, sir. It is very important for us to hear from all sides and all concerns. Just as you are doing in your hearing today, you are having multiple people from multiple sides of this. We will have the same things. The listening sessions are open to the public. We will be giving our presentation on the law. We will be giving a presentation on the issues that we consider our current thinking of those issues that are not that prescriptive in the law. We will allow participants there to enter their comments on anything that they wish to take into that. Hopefully we shall have a broad cross section of input. After we have done that, then there will be an additional comment period for the mandatory regulation.

The CHAIRMAN. I want to emphasize that that is very important and I appreciate your candor in saying right up front that the Administration through the Department did not support this law in the first place. There's a natural inclination on the part of the producer community to believe that we may be—not you in particular—that the Department may be biased in implementing it and biased in completing some figures. One of the ways that you can refute that bias is by showing everybody, look, we are listening to all sides and trying to be impartial in terms of who you are hearing.

Mr. HAWKS. Senator, we certainty did. As I alluded in my comments, my office is always open. My door is always open. I would have proponents and opponents come in the same day. Sometimes they do that intentionally to me. I intend to hear all sides and hear all comments as we move forward as I am sure you have.

The CHAIRMAN. I am going to ask one more question, and then I am going to defer to Congressman Blunt, and I will probably have some more after that.

Several ways of solving the record keeping requirement or at least lessening the burden on producers have been suggested, and I want to know your opinion, first of all, whether these ways would be allowed under the current law. Second, just maybe in general what you think of them. OK?

First, we are going to have people here today testifying on the second panel who are going to suggest that we grandfather in, if you will, cows that are already in the system because you can't go back and make up or reconstruct a verification record for a dairy, let's say, that you have had for eight or 10 years.

Then the second thing is a suggestion for a self-certification system where a producer would be able to certify on their own where a cow came from, or for that matter, a hog. First of all, do you think the current law permits that, or do you have to change the law to allow that, if necessary bend a little backward a little bit, if you can, and allow us to do that? Second, what do you think in general of those?

Mr. HAWKS. Senator, I am always open to bending over backward when it comes to farmers, having farmed all my life in Mississippi. The fact of the matter is the law is very particular. We do not have the latitude with the current reading of the section. I can assure you that we've had multiple attorneys from the Department of Agriculture to review that. The answer to that grandfathering is that the law does not allow us to do that.

The second part of that, the self-certification can be a component, but we have to have an auditable and verifiable trail so we think that the self-certification would not in and of itself be sufficient to meet the letter of the law. We feel very compelled to protect the integrity of this law. It is the right of the consumer to know that the USDA says that this is a U.S. made product, born, bred, and processed in the U.S.A. We feel very compelled to make sure that that's correct.

The CHAIRMAN. I recognize Congressman Blunt.

Mr. BLUNT. Well, let's talk about that, Mr. Secretary. Does the USDA administer the school lunch program now?

Mr. HAWKS. Yes.

Mr. BLUNT. Is that a yes?

Mr. HAWKS. Yes, sir.

Mr. BLUNT. Is it a requirement in that program to buy U.S. products?

Mr. HAWKS. Yes, sir, it is.

Mr. BLUNT. Why haven't we had this kind of chain of ownership requirement in that program you administer, is the first question? The second question is, isn't there some way you can take the current administrative structure that has apparently worked successfully for the school lunch program, and use that same process that

the Department has defended for years now to determine these questions of country of origin for other nonschool-consumed items?

Mr. HAWKS. Yes, sir. To answer your question for the record, very clearly we do administer the school lunch programs. As a matter of fact, that is one of the—I have that responsibility as well. The second part of your question, did the system that we use for the school lunch program as well as B.S.E. 30—there are several of these. It is a command and control type system. We basically take control of that, and we walk it through. The law is—with the current reading is that it is a process verification. We've got to verify those records for the trail. The current thinking is those would not meet the letter of the country-of-origin labeling.

Mr. BLUNT. I guess I don't understand how you think you meet the letter of the law now for the school lunch program. Just explain the difference to me. Now, the school lunch program says that you use U.S.-produced products, right?

Mr. HAWKS. Right.

Mr. BLUNT. You verify some way that that is the case?

Mr. HAWKS. Correct.

Mr. BLUNT. How do you do that now?

Mr. HAWKS. Right now, the way we do that is, as I explained, it is a command and a control.

Mr. BLUNT. That's what I didn't understand.

Mr. HAWKS. We basically take control of that product at a point in time there. We actually control the flow. This one is just a chain of custody verification. Our current thinking is that this would not.

Mr. BLUNT. On hamburger day at the school cafeteria, at what point does the school know you certify the school that this is a U.S. hamburger patty that they're going to be serving that day?

Mr. HAWKS. When we purchase that hamburger. We actually do the purchasing. That is part of the purchasing requirement, that it be a U.S. product. At that point in time, we literally take control of that product.

Mr. BLUNT. Your current view of the school lunch program is that it is purchased in the United States, not produced in the United States?

Mr. HAWKS. It is. There's also some additional things here. We talk about warm breath slaughter in the United States. Right now it is processed. The slaughter part is what you are dealing with there.

Mr. BLUNT. Do you understand my confusion on the two things being so dramatically different?

Mr. HAWKS. Yes, sir. It is a valid question. To be quite frank with you, that is one that I struggled with myself, and I asked those same questions of my staff.

Mr. BLUNT. Well, maybe that has some merit for further study, but I want to think about that. I may want to get back to you on that topic and see what we could do there. As you well understand, there will be real reluctance to reopen the Farm Act in a way that redefines this fact, the point where most people thought we were headed.

What I believe I heard you say in your testimony was that you clearly do not have the ability to mandate an identification system

under the law. It may be expressly prohibited as I indicated in my earlier comments. Is that right?

Mr. HAWKS. I will object to that term. We are expressly prohibited from creating a mandatory——

Mr. BLUNT. Did I also hear you say that you were prohibited from doing that because of the way the law is written that retailers must do that?

Mr. HAWKS. Yes, sir, retailers must, and retailers may require the chain back for the country of origin.

Mr. BLUNT. Can or must require?

Mr. HAWKS. They must.

Mr. BLUNT. The way the Department's interpreting the law right now is that the law was written in a way that USDA couldn't come up with a system but that retailers had to.

Mr. HAWKS. That is correct. Let me explain just a little bit as to how I would see the way we would administer this. The law is very explicit that it has to be labeled country of origin at the retail level. What I can see is we would go into the supermarket, if you will. We would look at the product and see it is labeled our product of U.S.A. We would ask that retailer to provide us information back through the chain, the process, the feed lot, the producer.

All the way back through that chain, we would have to have a verifiable, auditable trail back. What the retailer requires of the people down the chain, the law is very explicit there. The retailer has to require that, or the person that's supplying to that retailer has to furnish that information to them so that they can meet the letter of the law.

Mr. BLUNT. Every indication to our packers has been exactly that since the regulations went out, that they don't want to buy cattle for future consumption that they can't trace the chain of ownership back to the calf. This may be an unfair question, but since you are a good guy who's farmed all his life.

The CHAIRMAN. This is a congressional hearing.

Mr. BLUNT. I said that particularly for the Senator. Do you have a sense, Secretary, of what would be the easiest way you could do this if—do you still have a herd of cattle is another question, I guess. This is an aside.

Mr. HAWKS. Well, Senator, on the record——

Mr. BLUNT. No, no, I am just a Congressman.

Mr. HAWKS. Forgive me. I understand that, Congressman. To answer a couple of your questions, no, I do not have a herd of cattle now. Actually, AVIS, the agency that I went to put me out of the cattle business some years ago. I have said in my Senate confirmation hearing that I was really looking forward to having responsibility for that agency. I do not have a herd of cattle now.

Mr. BLUNT. Do you have a sense, Mr. Under Secretary, is my question. As a person that understands this industry, what would be in your view—give me a pattern here that you were going to try or if you were a producer trying to figure out the easiest way to do this. Is this a cow vaccine, ear tag kind of chain, or how do you really do this?

Mr. HAWKS. Congressman, in light of the law being so prohibitive of me or the Department of Agriculture prescribing that system, I would be very reluctant to share that with you here today. That's

the purpose of having these hearings. That's the purpose of having this session. Maybe some of our presenters later today will have some good ideas. I'd prefer to hear from them.

Mr. BLUNT. That's not a bad position to take, and hopefully at the end of these listening sessions, you will produce, as a result of this session, some ideas that you've heard that may make this workable. The other thing I want to pursue before I turn this back to Senator Talent and move on to the other great witnesses that have assembled here today, this whole idea of current animals. How do you propose that be dealt with?

Mr. HAWKS. Congressman, the law is very prescriptive again as we talked about earlier. The animals that—particularly those that are the breeding animals, older animals today that we will be marketing after the mandatory system comes in, unless they have a verifiable trail, they will not be able to go into retail as I see it today. I would just have to say if I was a cattle producer today and I had a calf crop on the ground I would find some way to verify where they came from.

Mr. BLUNT. Senator, thank you.

The CHAIRMAN. Thank you, Mr. Blunt, for those questions. I just noticed that on my cup of coffee from McDonald's they say the beans come from Columbia, Brazil, and Central America, so they've done some product-of-origin labeling. Maybe we need to check with McDonald's for that.

I want to push you a little. I understand why you don't want to say how you would do it. As tempted as I am to insist with you, to the extent that I can, I am not going to because I understand you are in a situation where if you don't say anything, we get all over you. If you do say something, then it is all over the press. As long as you have these listening sessions that are open and taking information, I can live with that.

I do want to push you on the whole question of how prescriptive this is. Let me just suggest a couple of things to you and get your comments on it. First of all, there is a provision in the law, as you say, prohibiting you from a mandatory national tracing system. That can be taken as some indication from the Congress that you have some discretion not to require such extensive records as you might otherwise think. Then the second thing is that the law says that the Secretary, quote, may require a verifiable record keeping audit trail, not shall require. Why don't those two provisions give you more discretion than you are saying you now have?

Mr. HAWKS. Senator, having served in the legislature before coming to Washington, DC, I certainly understand the difference between may and shall. I also feel in this one, as we stated, that it is very explicit that we are prohibited from doing this kind of deed. I feel in order to protect the integrity of this system, we have to have that verifiable trail. If we do not have the capability of absolutely determining the origin, then we would be doing a disservice to the public. We would be doing a disservice to the consumer that would be taking this product and believing that this is from the United States.

My answer to that is to protect the integrity of this system, we've got to have some kind of a system in place or some kind of a process in place where we are prohibited from doing the system. These

guidelines—not necessarily guidelines, these suggestions that have been made be used to do this. They're very good. I would say that with our current thinking, our hands are basically tied on that.

The CHAIRMAN. Let me just make sure I have covered everything for the record and also some other areas of interest to me. Congressman Blunt mentioned the school lunch program. Of course, many states also have labeling programs in place. I haven't heard a lot of controversy about them. Now, wouldn't it be possible for you to take the processes of, to canvass the states, pick the one that seems to be working the best, use that one so that we all know we have a model out there that's working?

Mr. HAWKS. Well actually, Senator, we looked at a lot of those state laws. As I alluded to earlier, we sent people to look at some of the various states that have those. They are not as prescriptive. The born, raised, slaughtered on the meat side of this is one that's more difficult. Another issue there, assuming we took the state program, then that would potentially get us in trouble. What would prevent us from using a province in Canada or something other than that? That's one of the reasons that we are trying not to do that. There are some excellent state programs, and we are visiting those, and we are trying to make sure that we are doing what we are needing while staying within the prescriptive confines that we have in this law.

The CHAIRMAN. You said both the respective school lunch programs and the state programs, a big issue you see is the fact that the law as it was passed would require three-fold, in essence, reporting or labeling requirements. Those laws and those orders or those guidelines don't, so that changes it. In your judgment that's the big reason why they won't work.

Mr. HAWKS. Yes, sir, Senator, that is exactly the reason. The school lunch program is one that the requirements there are different as I alluded to in my comments to Congressman Blunt. The law there is not the born, raised, slaughtered so that gets us in some trouble. We have multiple definitions across government of what is in a product. This one is so explicit.

The CHAIRMAN. I'd like your department or staff to produce in more detail the differences you see between the school lunch and this statutory requirement. Like Congressman Blunt, I don't understand the details here. I am not going to ask you to go into greater depth here, but I am going to want to know that. We may come back at a subsequent time and ask for further testimony. Let's get some more for the record there. Just tell me for the record about how much of the meat sold in the retail market in the United States is U.S. beef. What percentage of the market is imported, do you know?

Mr. HAWKS. Well——

The CHAIRMAN. I am switching gears here.

Mr. HAWKS. You are switching gears on me. My number says it is approximately 10 to 20 percent.

The CHAIRMAN. Imported?

Mr. HAWKS. Imported.

The CHAIRMAN. OK. That's at retail? That doesn't——

Mr. HAWKS. That's at retail.

The CHAIRMAN. That does not include food service?

Mr. HAWKS. No.

Mr. BLUNT. Well, how do we know that?

Mr. HAWKS. Because I have a very good staff.

Mr. BLUNT. You know what I am saying. We know that now, and if we know that 80 to 90 percent is not imported, why can't we come up with some of that same chain that produces that same kind of verification?

Mr. HAWKS. The reason we know now is we do track it as it comes across the border. We know how much is coming in. Where we lose that identity is where it is being processed from there.

Mr. BLUNT. Well, maybe I am not making my point clear. If we know that, if we know what's coming in, why can't we produce a set of rules and regulations that require the exclusion rather than inclusion of it? If not only you know what comes in as a finished product, my sentiment is that it is also easier to know what cattle come across the border in a truck and identify them than it is to identify the 80 to 90 percent of the beef that's already here.

Why do we put the obligation on the U.S. producer instead of putting the obligation on the livestock that comes across the border or comes in across the border some way?

Mr. HAWKS. Congressman, that is an excellent question. The answer to that is very simple. The law requires that it is born, raised, slaughtered in the United States.

Mr. BLUNT. Maybe the law can be viewed in a way that you can identify what is born, raised, and slaughtered in the United States in another way that's easier for American producers, is what I am saying, Mr. Secretary. There are borders and there are checkpoints. I know one of the big concerns is what about the cattle that come in from South America or Mexico and come to a feed lot in Missouri or Kansas. It seems to me it would be easier to identify those animals than it would be to identify the 90 percent of the animals that don't come in.

Mr. HAWKS. I very clearly hear what you are saying and understand what you are saying. There again the law is so prescriptive. It says that we have to identify them in this manner, and we identify those that are coming in. It is not as prescriptive on how we identify those that come in from other countries.

Mr. BLUNT. Go ahead.

The CHAIRMAN. What Congressman Blunt is saying, look, you require that you keep a close touch on cattle that comes in from another country, and you keep track of that. Then anything that is not one of those is American. Now, it doesn't eliminate all the problems because it comes in and then it goes to American feedlots and then it is processed. That would be like born in Mexico, raised in United States, processed in United States, and you still have the complications, but——

Mr. BLUNT. My point is, you are tracking so many fewer animals that way. You have animals in a feed lot and I am also assuming that of the 10 to 20 percent that's sold at retail that's not of American origin, that a very relatively high percentage of that comes in already as a slaughtered animal. We are only dealing with the live animals that come in in some process of their life headed, I assume, toward a feed lot or to a packing plant that have to be identified.

It seems to me you say you have 3 percent of the animals at a feed lot, are animals that came in after they were born came in the United States, shouldn't it be easier to keep track of that 3 percent than it is to expect American producers to keep track of the other 97 percent? Obviously we can look at this very specifically and see it, that it is absolutely possible to go in that direction. Just common sense would lead you to believe that we know it is easier to check these animals coming in than it is to verify every animal that's here.

The CHAIRMAN. We will give you time to answer that, and then we will bring it up at the next panel.

Mr. HAWKS. Well, thank you, for the input. There again, the law is so prescriptive we feel like from a thorough reading of the law that we are not allowed to do that right. I very sincerely hear what you are saying. I understand what you are saying. I have heard that. Being a farmer myself, it makes sense. The law is so prescriptive that we don't feel that——

Mr. BLUNT. I don't want to belabor this. I am lucky to be part of this hearing that the Senator's had here and invited us. Anyway, I don't want to go too far with this. I don't know why the stores couldn't require the packers to give that information on non-domestic animals rather than to give them information on domestic animals. All we say is each store must keep records documenting country of origin for all covered commodities, and retailers and/or packers found to be in violation of the law will be fined up to $10,000 for violation. It seems equally reasonable to me and much easier if the stores approach that from the other direction, that they tell the packers that the packers have to tell them which animals came in that were not animals that originated here.

The CHAIRMAN. Whatever tracing system that were in place, it would only apply to imported beef.

Mr. BLUNT. Absolutely.

The CHAIRMAN. If it was not one of those, then you would know that at various stages it was in America. That would cut down on the record.

Mr. BLUNT. I will assume the full——

The CHAIRMAN. Mr. Secretary, you probably know a whole lot more than I know about this, but if you spend enough time in Southwest Missouri, we are going to figure this thing out for you.

[Applause.]

Mr. HAWKS. Senator, I have never doubted that they call it the Show Me State for a reason.

The CHAIRMAN. Welcome to Missouri.

Mr. HAWKS. It is always a pleasure to be in Missouri, and I am earnestly wanting to work with you to find a common sense solution.

The CHAIRMAN. I am not going to make you give up any more of a legal analysis at this point. That is also something I am going to followup on. I'd like the materials that you used to draw that conclusion that the law required you to do this rather than to allow people to prove, in effect, negatively that if it is not marked as something that comes from outside the country, than it was from America.

Mr. BLUNT. It would seem to me that the packer and the retailer has the penalty if they fail to do that. Easier to trace a relative handful of livestock through the system and see if the packer's failing to identify them than it is to trace the vast preponderance of the animals through the system. We might have some variable to——

The CHAIRMAN. Well, we will followup on that line with the next panel also. I just want to make certain there's nothing else. Just let me get your opinion on an issue that some of the packers have raised because if we assume that this will require a very extensive identification system in place, beginning at the producer level—and certainly there's a danger of that. That's the point of having a hearing.

The smaller producers, part-time ranchers, may not want to go ahead and do that or may not do that as well. The packers raise the issue that well, OK, one way they could deal with that would be simply to bid on livestock that comes from the bigger producers who can do that in a more sophisticated fashion. Some of the concerns we have, No. 2, if that were to happen, is there a possible violation of packers having to do that? I want you to think about that. Unless Congressman Blunt has further questions, we will let you go.

Mr. HAWKS. Senator, in response to that, it is quite reasonable for a packer to because they're obligated to provide to the retailer the information as to the country of origin. There are some figures there. They're entitled to ask for any information that is needed to meet the letter of the law. It is also reasonable to accept any business practice that they can justify. They have to be applied uniformly, and it will not adversely affect any person in a group. To say that they have the same opportunity , everybody has the same opportunity.

The packers would need to notify the producers up front as to what the requirements were. It just goes without saying that anyone in this industry should have the right to run their business in a manner that is prudent. With those criteria met, there would be no violations of the practice.

The CHAIRMAN. Well, that's certainly a sentiment that we can all go away with. Everybody should be able to. We will end your testimony on this panel unless Congressman Blunt has——

Mr. BLUNT. Thank you, Mr. Secretary.

The CHAIRMAN. We do thank you for coming and for allowing yourself to be questioned in this fashion. There's a lot of people in the government that wouldn't want to do that, and we really do appreciate you for being here, and I look forward to working with you, Mr. Secretary. Thanks so much.

Mr. HAWKS. Thank you, Senator, and Congressman Blunt.

The CHAIRMAN. If the next panel will get assembled, we will go right to you.

While you are assembling, I will say that the record will remain open for 5 days after this hearing so that people can submit written statements.

Mr. BLUNT. Senator, while this panel's getting ready, I would love to be able to stay, but I worked this into my schedule. I have to leave by quarter after 11, but it won't be because of lack of inter-

est in this panel and what they have to say. I know I will have access to the record on the hearing. This is particularly important in this part of our state, and I am grateful for you taking the time as you are.

The CHAIRMAN. Thank you. All of you just got an example of why your Congressman is such a great Congressman. He made some really good points, and we appreciate your being here.

Mr. BLUNT. Thanks so much.

The CHAIRMAN. You are welcome. Now that the official administration person is not testifying, I will just say we want to keep this informal. If you have a question you want to ask during the recitation, since you have to leave, just jump in. I want to make certain you have a chance to get through your testimony, but that doesn't mean that we can't jump in with questions. All right. We will go from left to right as I am looking at you. I will just introduce each one of you as you are ready to go. First, we have Mr. Mike O'Brien who is the vice president of produce for Schnuck Markets. Thank you for being with us, Mr. O'Brien.

STATEMENT OF MIKE O'BRIEN, VICE PRESIDENT OF PRODUCE, SCHNUCK MARKETS, INC.

Mr. O'BRIEN. Senator Talent, members of the agricultural subcommittee, fellow panelists and other distinguished guests. I am Mike O'Brien, vice president of produce for St. Louis-based Schnuck Markets, Incorporated, a family owned and operated supermarket chain of 100 stores in six states.

I am here today to help communicate concerns regarding the Farm Security and Rural Investment Act of 2002 as it relates to country-of-origin labeling. At Senator Talent's request, I will be speaking on behalf of the Food Marketing Institute and its 2,300 member companies representing 26,000 stores.

Although well-intended, we believe that part of the law specific to country of origin misses its mark. Designed as a way to show support to domestic farmers and producers, the COOL law gained credibility through claims it would enhance food safety and security.

From our standpoint, it will do neither. What it will do is level repercussions upon the industry. The COOL law, as it stands, will have a far-reaching and negative impact on the entire food distribution marketplace—from growers and ranchers to wholesalers and retailers—and ultimately to consumers.

I want to emphasize that retailers are not opposed to country-of-origin labeling. Schnucks, like many retailers, has been providing this type of information to consumers on a variety of products for quite some time. However, country of origin as defined by the law extends back to the farm or ranch on which the product originated.

Let me take you through a few of the finer points of the COOL law as retailers fully understand it. The COOL law requires that retailers be made primarily responsible for informing customers of the country of origin of similar to a law now in effect in Florida, but there are big differences.

Florida's Produce Labeling Act of 1979 only requires signs or labels for imported produce. It makes no mention of record, segregation, audits, or $10,000 fines. The Florida law was designed to help

sell more Florida produce. Should our government really be involved in marketing?

No one knows our customers better than we do. We work hard to deliver what our customers tell us they want and need. Last year, out of 22,000 calls logged by the Schnucks Consumer Affairs team, only nine even remotely pertained to country of origin. I am certain that most people would favor having as much information as possible provided at the point of purchase, but at what price?

The USDA estimates that the food production and distribution system will spend $2 billion in labor alone to establish record keeping systems in the first year. However, these early estimates do not take into account the impact of potential fines or additional expenses retailers will face from farmers, shippers, handlers, wholesalers, distributors and other retailers if they overhaul their entire record keeping, labeling, warehousing and distribution systems—all of which will be passed on to the consumer.

The supermarket industry as a whole operates on a very small margin basis. The industry average before tax net profit is 1 percent of sales. That means we only make a penny for every sales dollar.

Schnucks estimates that in the first year alone the implementation process will easily exceed $3 million. Imagine what a devastating blow this would be to the profitability of smaller retailers, suppliers and producers. Under the law, the Missouri tomato grower, for instance, the epitome of a small farmer, must adhere to the same guidelines as the large growers in Florida and in Mexico. Simply put, this law will be a burden to the very people it is trying to protect.

After the retailer, cow and calf operators will be the hardest hit by this law. Cattle born in February of this year fall under the law. That means farmers should be reacting to this law right now, and many still have no idea of what to expect.

There are some glaring inconsistencies in this law. For instance: I mentioned earlier that food service facilities were excluded, yet they represent 50 percent of the market for the same covered commodities retailers receive. Poultry is noticeably excluded from the list. Peanuts must be marked for the country of origin but not pecans, almonds or pistachios. Why include peanuts at all? Planters, Fishers and Schnucks Private Label company all currently source 100 percent of their products from the United States.

The CHAIRMAN. Mr. O'Brien, where are you in your testimony? I am trying to follow it.

Mr. O'BRIEN. I cut it back for you. I am on page 8.

The CHAIRMAN. The committee members can go on as long as they want, but we encourage witnesses to be as brief as possible. I am sorry to interrupt.

Mr. O'BRIEN. Fresh and frozen vegetables are treated differently. Birds Eye, for instance, must now include country of origin on frozen green beans, but the law does not apply to Del Monte's canned green beans. Frozen apples are covered, but frozen apple pies are not. We ask that you re-evaluate this legislation and consider the unintended results that may follow its implementation. I thought of four off that.

1) In reality, this law may make it cheaper to buy from foreign rather than domestic sources.

2) The law could give chicken and turkey products an unfair advantage in the marketplace over beef, pork and seafood.

3) In order to limit exposure under this law, retailers will be compelled to source covered commodities only from those who can afford the systems necessary to comply. This will devastate some of our smaller suppliers and make maintaining product nearly impossible.

4) Retailers cannot absorb the cost associated with implementing the law. Consequently, we will have to ask suppliers and producers to share the load. This will inevitably and unavoidably result in higher costs to consumers.

Again, we thank Senator Talent for holding this hearing today. We are all in support of the consumer's right to know. If that was the intention of the law, we don't think it gets us there.

Consumer confidence today is very low, and spending habits have become more conservative. This has put a strain on all types of retailers. We are asking that you help ensure that this legislation does not further burden the food system.

In conclusion, let me say that our customers always come first. If our customers want country-of-origin labeling and are willing to pay for the additional costs associated with such a program, the supermarket industry will meet that demand as it meets consumer demand every day. On behalf of Schnuck Markets, FMI and its member retailers, I thank you for your time and consideration of the issue.

[The prepared statement of Mr. O'Brien can be found in the appendix on page 73.]

The CHAIRMAN. Thank you, Mr. O'Brien. Our next witness is Mr. Ken Bull, vice president of cattle procurement.

STATEMENT OF KEN BULL, VICE PRESIDENT, CATTLE PROCUREMENT, EXCEL, WICHITA, KANSAS

Mr. BULL. Thank you very much, Senator Talent and Congressman Blunt, for giving me the opportunity to testify before your committee today on what I believe is a well-intentioned, yet severely flawed law.

Mandatory country-of-origin labeling—COOL for short—for beef and pork is a concept that has been discussed for many years. As I understand it, supporters believe that American consumers want to know more about where their food comes from and are willing to pay more to support the infrastructure necessary to identity preserve their food. Some supporters, I believe, are motivated by another reason. That is to block the trading of cattle and meat with U.S. trading partners, especially Canada and Mexico.

COOL is now the law, and we are actively trying to figure out how we are going to comply with it. I appreciate the chance today to highlight for the committee the complexities that we will face as a result of the law.

First, this is a retail labeling law that mandates there must be a verifiable audit trail to prove that the labels on products are true and accurate. The law also prescribes penalties of $10,000 for violations.

In an effort to better understand the law, I recently met with AMS staff in Washington to ensure that my read of the law was correct, and it is. A verifiable audit trail means that I must be able to provide documents that back up the claims made on the meat I market to our retail customer. In order for me to do this, the feeder or auction barn from who I buy must be able to provide these documents, and I must be able to attach these documents to the meat I sell at retail.

In addition, I have been notified by retailers that if I intend to sell them meat in the future, I will have to assume liability for any misrepresentation on their labels. You can imagine I am going to take every step necessary to ensure that I am keeping my customer and myself in compliance with the law. Finally, retailers are demanding that I develop an auditable record keeping system that will give them the assurance the we will be able to comply and not subject them to possible problems.

An additional concern that has not been identified is that under the Meat Inspection Act, which is governed by another agency, the Food Safety Inspection Service, to apply a false label to a product, is to ship a misbranded product. This is punishable as a felony, and the product involved is likely subject to recall. I am not going to risk going to jail for selling the product, or going to subject my company to a recall. Again you can bet I am going to do everything I can to follow the law. I simply cannot certify anything I do not know to be absolutely true. This interpretation of the Meat Act was confirmed when I met several weeks ago with the Deputy Administrator of FSIS and the chief of the labeling branch.

While we already do some branding today and we support branding, it is based on attributes that reflect the market niche a retailer wants to uniquely fill. These brands are reliant on factors that are applied in our plant and more importantly are cost effective. The COOL brand relies on factors from the birth of the animal, following it through the production phase, into our plants, then on to retail, all at significant cost and questionable demand.

We invest significant revenue in developing and marketing brands. These investments are done only after significant research to demonstrate that the benefits or returns will far outweigh the costs.

There is much speculation on the cost of COOL, and certainly I have my own idea, but frankly I believe the true cost is that there stands to be a significant change in the cattle and hog industry as a result of this law. We have done cost estimates that quickly led us to conclude that we are not going to be able to make the investments it would take to be able to run our plants the way we run them today.

To create the kind of identity preservation system this law requires would cost us $40–50 million per plant. Then even then we would be at the risk of an unintentional mistake.

A far more likely scenario is that packers would call on feeders that have the best, most reliable, audit proof record systems, especially electronic ear tags. I met with the Deputy Administrator of the USDA Packers and Stockyards Administration to ensure that this was consistent with P&S regulations, and I have been assured that steps such as these are entirely within the scope of the law.

We will seek to maintain a proactive dialog with the Agency as this unfolds. We believe we are on solid footing with P&S in saying that if we suspect records are not reliable, we will have a difficult time being able to bid on those livestock.

We believe one probable outcome of the law is that packers would most likely dedicate plants as U.S.A.-only origin or mixed origin plants and then segregate production by days so that only like-origin animals are processed on given days. This would eliminate marketing options that producers currently enjoy.

Today we sort beef carcasses in 27 different ways—by grade, by certified programs, and other factors. Under this law, we layer in at least a doubling of these sorts. Our coolers are the size of football fields and the changes this law necessitates are not cheap. One example of an unrealized cost is that currently FSIS has regulations that require us to leave 3-minute gaps between grade sorts and grade changes. Downtime in our plant is around $1100 a minute, so increasing the number of these 3-minute gaps adds up in a hurry.

Of particular concern is something we learned from AMS, and that there is zero tolerance for error. In our meeting with AMS, we painted a hypothetical scenario that goes like this: Say we processed a group of cattle on Monday, and in reviewing our records, we found that somebody made a mistake, either ourselves or the producer, and a Mexican-born animal got into the mix of 1500 head of U.S. born, raised and slaughtered. We learned from AMS that in that scenario all 1500 head would be potentially mislabeled or misbranded meaning that we have possibly created a huge list of violations for our retail customers. We must notify the retailer, and the retailer must not market the product because it would be a willful violation on every package of meat from that 1500 head of livestock. All of the product from these 1500 head that was going into retail is now subject to a Class III recall, bringing great harm to our reputation and our brand. This meat would now have to be diverted into a food service channel at additional cost and substantial discount—all by virtue of a simple human error—with no impact to food safety whatsoever.

Another huge concern for us is the impact on cow/calf operators and the dairy industry. There are beef cows as much as a dozen years old, and many of these animals do not have acceptable documentation. Dairy cows live five to 8 years, and many have crossed the Canadian border. There is insufficient documentation in the dairy industry as well. Much of the cow beef ends up as lean trim that is blended with less lean trim for ground beef production and sold at either retail or food service. Under the law, this cow will be relegated to food service as its only market for a long time. If you are a cow/calf or dairy operator, you'll want to pay close attention to this loss of the retail demand base and the marketability of these animals. AMS again has confirmed our observations, and I would strongly encourage producers to understand this likely possibility.

In closing, there is much to learn about the law as its enforcement unfolds. USDA has to implement the law that was passed, and from where I sit, the Department is doing just that. My hat is off to Under Secretary Hawks and his team in doing this

unenviable job. AMS, P&S, FSIS all have their work cut out for them. Do we? I am happy to answer any questions you might have.

Mr. BLUNT. Well, I do have a question while I am here and you are here. I appreciate your job, being responsible for buying and keeping track of these animals. I'd like to go back to the question I asked Secretary Hawks.

Assuming that you have to identify virtually one of the two groups of animals or maybe you have to identify every animal that you buy, how much more difficult would it be or less difficult for you to only identify the animals that have crossed the border?

Mr. BULL. That's a great question, Congressman. First of all, this is just to clarify, packers aren't the ones that'll be doing the identification. We are basically the buyers of a commodity. The question that you are asking is how many are coming across the border and is there some mechanism that could be put in place.

You might have people describe that that would be a trade violation. That's up to markets to interpret, whether or not putting that burden only on imported animals is a problem. If animals are coming directly from a country directly into our packing plants as the only method of entering the country, then you might get a solution. The problem is you have anywhere from 500,000 to 1.2 million feeder cattle coming across the border from Mexico and going to cow/calf grazing countries where they're out on stockers. They go into the feedlots. They're commingled at auctions. They're blended in. Then in looking at the other border, the Canadian border, we have feeder cattle coming across the border. We have fat cattle coming across the border. There appears to be cows that come across that border as well. These animals all get dispersed within the system in the United States and commingled with other cows. You would have to create a system that no one can alter on those animals.

Mr. BLUNT. That's exactly the same system you have to have for all the other animals, be it imported or domestic animals.

Mr. BULL. That's correct.

Mr. BLUNT. It is just so many more animals you are keeping track of on the same basis.

Mr. BULL. The other problem is let's say we come up that imported animals have to have electronic ear tags.

Mr. BLUNT. Right.

Mr. BULL. Maybe that's one solution. You are a producer and you have more marketability if your animals don't have an electronic ear tag which designates them as U.S. It would be very easy to make sure that that animal loses its ear tag. You almost have to do the converse as a way to police your system. In other words, you have to identify the animals that become part of the population, wherever the animal is from.

Mr. BLUNT. Well, either that, or you have to set up a violation regimen where you really watch those animals more closely and enforce the violation.

Mr. BULL. It is easier because really that person has to go back to the producers who are buying those animals and having to understand how they're managing those animals and how they would feel for their part. Our job is to take whatever label is identifying

those animals when they get to our plant and make sure that label is there.

Mr. BLUNT. You said 500,000 head of cattle come across the Mexican border?

Mr. BULL. Yes, it is 500,000 who will make it through this year will be about——

Mr. BLUNT. Out of a total of what?

Mr. BULL. Slaughtered in the United States, about 28 million.

Mr. BLUNT. We have an option of keeping track of 800,000. It is 28 million less 800,000.

Mr. BULL. You have about a million six coming from Canada. It is about 2 and a half million out of the 28 million or slightly under 10 percent.

Mr. BLUNT. You are helping me even feel more strongly about the point I am trying to make, Mr. Bull. Thank you.

The CHAIRMAN. Yes, I see where Mr. Blunt is headed. Now, what Mr. Hawks said was that the statute doesn't let us do that. First of all, the question was the statute does or doesn't let you do that. The second thing, this is if it truly doesn't or if we need to clarify that, that might be something we could recommend. If we had a system that you felt secure enough for tagging or marking animals that had come from another country or I guess that went to a less common feeder lot from another country and then if the animal didn't have that mark or that tag, then that would be the documentation saying that it was an American animal because of what it didn't have.

I am thinking out loud here. I understand the Department's reservation about that in part because that's not how a bureaucracy does things. It is a little too logical. You know what I mean? It is like the IRS is not going to let you use the absence of something to prove the validity of the deduction. In the right circumstances, there's no reason for why you couldn't.

Mr. BULL. The bigger issue, that really faces us is not whether or not we can identity preserve those 2 and a half million animals that are interspersed in our system. The real problem is how we comply with this at the retail labeling end. Let's assume that you are right and we are able to identify those 2 and a half million head.

My job, then, if an animal comes to me and bears none of those identifications, then I get to assume that you passed that on to Schnuck as a product of the United States. Let's assume that in the record keeping system somebody going back through that trail now finds that that's a Mexican animal that had an ear tag removed somewhere in that system. Now, I have now got that whole batch of animals in violation, and Schnuck's now has all that product that they can't——

Mr. BLUNT. You also have the same problem if somebody takes that domestic ear tag and puts it in the ear of an animal that comes into the system. If somebody wants to violate that system, it is relatively easy to do. The only thing that stops you from doing that is the penalty. Part of the question here is what's really best for the U.S. producer and what's the easier group of animals to keep track of.

The CHAIRMAN. I agree with you. If I was your lawyer, I would raise the prospect of that hypothetical you gave me. A herd of 10,000, you find out one of them is a Mexican cow. That's a bureaucratic tendency, to come in and say the whole thing's shot. You've got to recall them all.

One way of dealing with that would be either—in this case with more legislation, if necessary, to give people a different place in the production chain, a safe harbor. In other words, to say look, if you have done thus and so, you are safe. Spell it out.

I certainly have no—and I don't think any other supporters still have problems saying if you had done your responsibilities to check all the tags to make sure that whatever system goes into place, that it is not a foreign animal and then you find out through fraud or some mistake that there's one animal in there we can create safe harbors for you. It is complicated, but we are beginning to make some progress. If you need to go——

Mr. BLUNT. I do need to. Thank you, sir, for including me this morning. Thank you all for taking time out for this. I will take the testimony with me, and we will take a look at it.

[The prepared statement of Mr. Bull can be found in the appendix on page 89.]

The CHAIRMAN. Next is Mr. Steve Owens who is the co-owner of Joplin Stockyards. I am very interested to hear your comments on all these issues.

STATEMENT OF STEVE OWENS, CO-OWNER, JOPLIN REGIONAL STOCKYARDS, INC.

Mr. OWENS. I also want to thank you, Senator Talent, for inviting me to this, and also Congressman Blunt.

Again, my name is Steve Owens. I am the vice president and co-owner, along with Jackie Moore, of Joplin Regional Stockyards, and we have two locations in Southwest Missouri. Our first location is what we call the Joplin facility, and it is located 13 miles east of here on I–44. We also have a facility in Springfield which is located at Kansas and Division in Springfield, Missouri.

Our primary business is marketing cattle for producers located in Missouri, Oklahoma, Arkansas and Kansas. Joplin Regional Stockyards has 105 employees to help service our approximately 20,000 cattle producers. Over the last 2 years we have averaged selling approximately 455,000 cattle per year at a value of $225,485,000. Our services include three regular weekly auctions, seasonal value-added sales, commingled cattle sales, video cattle sales, and all of our auctions are broadcast live over the internet.

Our primary market area is within a 150-mile radius for a facility that's not used based on how cattle flow. This primary market area includes 27 countries in Missouri, 6 counties in Arkansas, 8 counties in Oklahoma and 6 counties in Kansas. Our service area for our video cattle reaches out to about a 400-mile radius. Within our primary market area, there are 43,805 producers representing 2,855,901 total cattle and 1,315,543 beef cows. This is based on 1997 census information.

The 2002 Farm bBill includes law that requires mandatory country-of-origin labeling at the retail level on certain commodities which includes beef. This mandatory labeling will start on Sep-

tember 30th, 2004. For beef to be labeled as U.S. beef, it must be from an animal that is exclusively born, raised, and slaughtered in the United States. The law also states that a verifiable record audit trail be maintained by those who prepare, store, handle and distribute a covered commodity, but specifically says that a mandatory identification system shall not be used. There will be a fine of $10,000 per violation incurred at either the retail or packer level. This labeling law is only in effect on beef sold in the retail sector (grocery stores) and is not on the beef that's sold in the food service industry.

We have spent the last 4 months trying to determine how this law is going to effect Joplin Regional Stockyards and more importantly how it is going to effect the cattle produced in our market area. We support the labeling of beef United States producers produce because of its quality and safety characteristics when compared with that of other countries. We also feel that the system utilized to achieve it needs to be taken into consideration to determine the cost and benefits. From our investigations, and our meetings and discussions with various people in the industry and the government, the following is our projected effect the mandatory labeling law will have on our producers:

We feel that the system will be mandated by retailers and packers to meet the requirements of the law, because that's where the law is directed, at the retailers and packers. We feel that this system will require that suppliers of cattle, (that being feed yards, stockers, calf/cow producers) will need to maintain accurate record keeping for these animals born and raised in the United States.

Even though the law specifically prohibits a mandatory identification system for producers, it also requires the country of origin be specified for all commodities, including those of United States origin. This is how we view the USDA is interpreting that law. Since the law is directed at the retailer/packer, they will mandate an identification system from their suppliers.

Producers will be required to maintain records that will prove U.S. origin and identify these cattle in some way before or at the time of first marketing. The producer will be required to sign an affidavit or possibly—and it appears this is more likely—some type of third-party verification to these facts.

From our discussions with our producers in our area, they are more concerned about the facts and potential scenarios leading us to believe that a significant number of them will elect to either not participate or quit raising cattle altogether. There will be a cost of meeting the requirements of this law that include record keeping, identification and additional cooler space at the packer and retail level. These costs will more than likely be passed back to the producer.

The benefits of mandatory labeling are harder to determine. Will the consumer pay more for U.S. beef? We believe that a majority of Americans do desire beef born and raised in the United States. Do they have enough extra money to spend on U.S. beef to make the law beneficial to U.S. cattle producers?

We believe that this is yet to be determined. We feel that a bigger concern for the producers in our area is the additional hassles that this law creates. The majority of our producers are part-time

or hobby cattlemen. They raise cattle as an income supplement to another job. In Missouri there are 60,204 beef cow operations of which 47,137 have less than 50 head. The average cow herd in our market area is 30 head, which means there are significant producers who have 20 or less cows.

The potential requirements of this law will outweigh any financial benefit that the small producer will receive from mandatory labeling. Missouri is reflective of what the average beef cow producer resembles in the United States.

Joplin Regional Stockyards is supportive of labeling of beef, but we feel that the requirements of the current mandatory guidelines as we understand them will be very burdensome, especially on smaller cattle producers. We feel that a system that does not require the producer to identify his cattle or a voluntary system that will help us determine the true benefits of product labeling is a more prudent choice at this time. The risk of permanently damaging the cattle-producing segment of our agriculture economy is significant.

[The prepared statement of Mr. Owens can be found in the appendix on page 93.].

The CHAIRMAN. Thank you, Mr. Owens. Our next witness is Phil Howerton, Chairman of the Pork Producers. Phil, it is good to have you here today and hear your comments. Please go ahead.

STATEMENT OF PHIL HOWERTON, MISSOURI PORK ASSOCIATION

Mr. HOWERTON. Senator Talent and distinguished guests, my name is Phil Howerton, a pork producer from Chilhowee, Missouri, and I am here to testify on behalf of the Missouri production costs to hog operations, it will reduce U.S. pork exports globally, it will decrease domestic U.S. pork consumption, and it provides an unfair economic advantage to the chicken and turkey products, to name a few. Let me embellish further on each of these points.

Mandatory COOL will not raise live hog prices long-term and could result in lower hog prices due to the law's requirement of extensive record keeping, segregation and tracking of imported animals by producers and packers. Given the lack of research evidence of consumer interest in country-of-origin labeling for pork, the increased packer, processor, retailer and USDA costs associated with labeling will be passed back to producers in the form of lower hog prices.

Mandatory COOL will add production costs to my hog operation in order to meet the burdensome verifiable record audit trail standard set in the law. It appears to us that any certification and audit system must have at least three components—a detailed records system, legal documents to guarantee origin, and third-party audits of these records. All of these impose direct costs on producers, not to mention the potential liability for noncompliance.

Mandatory COOL will reduce U.S. pork exports. An economic analysis of the mandatory COOL program performed by economists for the U.S. pork industry and Iowa State University concluded that by the year 2010, U.S. pork exports could be 50 percent lower than they would be without the labeling program. This is because Canada, which currently supplies 5.7 million head of live hogs to

the U.S., would be forced to process these hogs in Canada. Canada's pork output would increase, and since consumption will not grow by that much, this pork will compete directly with U.S. pork both inside the U.S. and in the common export markets. Lower U.S. exports would reduce the U.S. pork industry's value-adding effect for corn and soybean, thus impacting all of the U.S. agriculture. The U.S. will likely once again become a net importer of pork.

Mandatory COOL will cause a reduction in domestic pork consumption. According to the same study, a full trace-back system implemented under COOL will increase U.S. farm-level pork production costs by 10 percent or $10.22 a head. This is equivalent to a 10 percent increase in the cost of on-farm production or approximately $1.02 billion for the U.S. pork industry. Assuming the 10 percent increase in costs is passed on to the retail level, U.S. consumers will likely demand 7 percent less pork due to higher prices. A presumably less costly certification and audit system will have a smaller but still negative effect on U.S. consumption.

Mandatory COOL puts small independent producers at a significant economic disadvantage to large integrated operations. A recently published study conducted estimated that pork supplier implementation costs for integrated hog production or packer processing systems to be $3.25 a head. The process for farms with non-integrated production systems was $6.25 to $10.25 per head. This leads to a $7 per head disadvantage for small producers that would quickly put them out of business. Another recent study conducted also cites the loss of over 1,000 independent farmer and large integrators in their place.

Mandatory COOL provides significant economic advantage to chicken and turkey products. Poultry is the main competitor of beef and pork in the retail meat case and is exempt from mandatory COOL and thus will not face any additional costs to the poultry chain.

The flawed mandatory country-of-origin meat labeling law also raises more questions than it answers. Here are two that really trouble me: Why does mandatory COOL exempt chicken and turkey products and the entire food service sector—restaurants, fast-food establishments, lunchrooms, cafeterias, lounges, bars and food stands? Does Congress believe that U.S. consumers only have the right to know where their pork, beef and lamb come from but not their chicken and turkey—and only when they eat out—and only when they eat at home and not when they dine out? The second one, USDA's mandatory COOL guidelines clearly have periodic audits in mind when they require a verifiable record keeping audit trail. How frequently and how in-depth will such audits be and who will pay for them?

Additionally, will the legal affidavit requirements by packers be required of producers for each load of hogs? Finally, what are the liability ramifications of these requirements?

Senator Talent, it is becoming increasingly clear that due to the effort of providing mandatory country-of-origin meat labeling, it is going to be a very costly experiment. The additional costs including the liability issues required by this program far outweigh any benefits that might accrue to pork producers at the farm level. Thus,

the Missouri Pork Association urges you to oppose the implementation of the mandatory country-of-origin meat labeling. We believe that the mandatory country-of-origin meat labeling program should remain voluntary and be market driven rather than government mandated.

Thank you for allowing me to testify today, and I would be pleased to answer any questions.

[The prepared statement of Mr. Howerton can be found in the appendix on page 95.]

The CHAIRMAN. I appreciate that. Let me make one thing clear on behalf of the subcommittee and what I feel is certainly within our purview and what isn't. You are perfectly free to express your opinions, and Mr. O'Brien and Mr. Thorn were also. The only thing about mandatory country-of-origin labeling is whether it is a good idea or not. I am not going to go into that in terms of deliberation with the subcommittee because that was a decision made when Congress passed the law.

What I do want to get into is how we can implement it in such a way that it ends up helping, or at least not hurting, the producers that this was designed to help. Now in the context of that, I do expect the most vigorous proponents of COOL to answer the concerns that have been raised about whether or not it will be extremely costly.

When you say it is going to increase the cost of the average producer of hogs by 10 percent, that's a real significant profit. We need to make certain that that does not, in fact, happen. I don't think anybody wants that to happen. That's really what I am going into. I appreciate your testimony, and we will go now to Max Thornsberry, who's president of the Missouri Stockgrower's Association.

STATEMENT OF MAX THORNSBERRY, PRESIDENT, MISSOURI STOCKGROWER'S ASSOCIATION

Mr. THORNSBERRY. Senator Talent, I thank you for allowing us to be here today, and it is a distinct honor to testify for you on behalf of the Missouri Stockgrower's Association. We are a relatively new organization in the State of Missouri that represents cattle, hogs, lambs and meat goats. We are affiliated with R-CALF-USA which is a national affiliate of nearly 10,000 members representing grass-roots cattlemen and cattlewomen all over the United States.

I am not here today to discuss the negative or positive aspects of this law. I am here to visit with you about a law that has already been passed and signed by our President and approved by our Congress. I am here today to visit with you about why we think it should be implemented and how we could do that in the best manner for our producers. We have just held two informational gathering meetings in the state of Missouri. I am not following my testimony. You have it in written form.

The overwhelming majority of those people who attended those meetings gave us basically two opinions: One was we want the opportunity to differentiate our product in the marketplace, and we believe the country-of-origin labeling is that method. Two, we want this law to cause us the least of amount of grief and record and government regulation.

Senator Talent, it appears like common sense is falling out the window when it comes to the USDA. We hear one group in USDA saying third-party verification is not a part of the law. That's what Mr. Bill Sessions told us at both of our meetings, that it is not required. Yet Mr. Hawks today said that if a packer wants to require third-party verification, that's their business.

We believe that opens the door for a Pandora's box of opportunities for these packers to gain proprietary information about our inventory, about our operations and other aspects of our business that are private. That's between us and the IRS and nobody else. If we open the door and allow them to require or give them the opportunity and allow them to review our records, to review our verification and audit trails, then they will know exactly how many cattle I own, what sections I own, how many calves I produce.

They already have a computerized system in inventory control that bar none is the best in the world. I don't believe that we need to allow those in an adversarial role to have complete control of our inventory and business. We do believe that this law can be implemented with policies, and we believe that there are a couple of things we should discuss today.

First off, the Missouri Association believes a grandfather period should be attached to the country-of-origin labeling law. I am not in agreement with Mr. Hawks that that cannot be accomplished. Cattle that are purchased prior to September 2004 may not be legally identified as born and raised in the U.S.A. A grandfather period would allow these older animals to enter the food chain without discrimination.

The USDA identifies all imported live animals. At the present time because of tuberculosis, we brand every calf that comes across the border of Mexico with an M on its cheek. That brand follows that animal all the way through the box. It would be very easy to do the very same thing with cattle or meat coming from other locations. Meat that comes into this country from Australia and New Zealand carries on the side of that box a product of whichever country it is coming from. It would be very easy to track that with the computerized system we have.

For many reasons, some proof of ownership is reasonable as several times we've mentioned. It is possible for an enemy of the United States to rustle a load of cattle, inject them all with a prohibited medication or disease and sell them throughout several states, particularly states like Missouri that do not have a brand identification law. Under the current system of operations, many states do not require any proof of ownership to sell cattle. States without a brand law do not follow cattle ownership closely. A minimum proof of ownership will greatly reduce the chances of this terrorist scenario that I have defined.

The USDA has put out a list of required records to prove proof of ownership. They are very simple. They are veterinary bills, feed bills, cow/calf records that we keep in the normal process of operation. Here my colleagues testify that this is going to be such an onerous system that nobody will ever possibly be able to comply. Yet Bill Sessions tells us it is going to be a very simple, easy system.

I say today, Senator Talent, that common sense must prevail. Our producers want to differentiate our product in the marketplace. As the Free Trades of America Act reaches its maturation, we are going to be in a very negative position. If we allow meat in here from every country throughout the world, we need to find a way to differentiate our meat. We need a way to draw attention to our meat.

That's all we are asking for. We are not asking for something that's complicated and unusual and difficult. Missouri has a country-of-origin labeling law that functions very effectively right now. I'd like to add one thing, Senator Talent, The Missouri livestock producers—we are the No. 2 cow/calf state in the nation. There is well over 2 million independent—or calf/cow in this nation, and almost 70,000 in cow/calf producers.

We pay a dollar a head on every animal we sell. Sometimes that animal goes at auction for three, four, or nine and generates three more dollars. Those dollars have been used to develop a demand in our country for beef. That demand is the best in the world bar none. Every nation in the world wants to participate in what we get paid for.

Yet Canada did not support us in our war on terrorism. Mexico did not support us in our war on terrorism, and Brazil actually offered political asylum to Saddam Hussein. We have more at stake here than just labeling our own product. There is an element of patriotism that exists in this country, and I believe those consumers will support Missouri producers if given an opportunity. Thank you.

[The prepared statement of Mr. Thornsberry can be found in the appendix on page 100.]

The CHAIRMAN. Thank you. Our final witness on this panel is Ken Disselhorst, president of the Missouri Cattlemen's Association.

STATEMENT OF KEN DISSELHORST, PRESIDENT, MISSOURI CATTLEMEN'S ASSOCIATION

Mr. DISSELHORST. Thank you very much. Good morning. My name is Ken Disselhorst. I am currently serving as president of the Missouri Cattlemen's Association. The Missouri Cattlemen's Association is a producer's group organization with a membership of 107 counties across the state of Missouri, and it is also affiliated with the National Cattlemen's Beef Association. I am proud to be here today to discuss with you country-of-origin labeling. The issue is a concern to me and the members of the Missouri Cattlemen's Association as well as beef producers across the country. Members of the Missouri Cattlemen's Association have also had many opportunities to hear presentations from the United States Department of Agriculture staff as well as many industry experts.

We again have identified about six key issues in this debate that certainly concerns us. I will just briefly touch on them because many of them have already been discussed with some of the other panelists. Again, the use of animal identification, how's that going to affect our industry, and how we are going to comply with producers to verify an auditable trail. Also, industry demand of a third-party verifier, who those people are going to be, what's obviously going to be the cost of those folks. Certainly I don't believe

there will be very many of those or any of those folks who will do that for free. What's the kind of burden that's going to be putting on the consumer demand and industry demand requirement as we see it right now? The impossibility, again, of verifying cows, cows that have been purchased and not necessarily born on a producer's property. Again, we support some kind of a grandfather clause or something that's going to allow these producers to sell the product, sell their cows, and have the opportunity to at least make it into the retail chain.

The CHAIRMAN. Let me jump in there because you and Max both mentioned the grandfather clause which makes sense on the surface of it to me. The problem is that it is not so much a question of whether that cow could be sold without having to be labeled, but the problem that's being raised is how you prove where a particular cow comes from or what category it belongs to.

If you say these cows are grandfathered, the retailer and therefore the producer—here's the argument on the other side of that—is that someone has to be able to prove that that cow is one of the grandfathered cows.

Mr. THORNSBERRY. It is simple. What——

The CHAIRMAN. You are going to have to tag the cow with something to show it is a grandfathered cow. How do you write that into it? How do you trace it? What kind of records do you have to supply? Do you see what I am saying?

Mr. THORNSBERRY. Yes.

The CHAIRMAN. Otherwise if someday USDA goes and does an audit of a retailer and the retailer says, Oh, no, this stuff isn't labeled that way because these were all cows that were grandfathered. They say, OK, well, prove that. How do they prove that?

Mr. DISSELHORST. This is one of the unintended consequences, I believe, with the law itself is the fact that, again, how is a producer going to present documentation that that calf was born or that cow was born in this country if he had purchased that cow through Joplin Regional Stockyards as a break cow or what have you and he doesn't know who the owner was, and that cow may have had a couple of owners before it went through the stockyards for purchasers? Again, it is one of those unintended consequences that a producer just simply isn't going to be really able to comply with. That is a concern, and I understand the other side of it. It is really a——

The CHAIRMAN. Would you guys be satisfied with— forget for a second, although the current law permits it, which is something lawyers fight over. Would you be satisfied with a self-certification? In other words the producer certifies—I am giving an affidavit to the auction barn or wherever this is a grandfathered cow. I have had this cow four or 5 years old. I certify this. Whoever then is audited produces that certification. That's it then. The law—you can't go behind that certification. I kind of thought that's where you were headed, Max. Is that what you are thinking?

Mr. THORNSBERRY. What I'd personally like to see is identify the foreign cattle and foreign meat and leave our domestic cattle alone by default. They're born, raised and slaughtered in the United States. You just can't do that. It is not possible. Sure, it is possible. We trace every Mexican steer through the United States. We have

an international health paper for every day he's here in the United States. All it would require is a little bit more effort on our part, and we could do that.

The CHAIRMAN. Right. That's very intriguing. We've talked about that before. You say you do not require that because if it is not a foreign-born animal or raised or processed, then you'd assume it is an American. Our producers don't have to do anything. That's your answer?

Mr. THORNSBERRY. Yes.

The CHAIRMAN. You prefer to stick with that, and as long as that's possibly workable, then you don't have to get into self-certification anyway.

Mr. THORNSBERRY. Yes, our problem is we are dealing with a market-driven program. We are concerned about extra costs to the beef system, not only costs to identify the calves at the producer level but also what of our friends in the retail, the packers, the feeders, the stocker grower, what they have to do to comply with the language of the law.

Mr. DISSELHORST. I am not sure that self-certifications maybe eases the burden from the cow/calf guys, but what's the cost that's still going to be there for the rest of the beef system? That was another thing I wanted to mention was that Ernest Davis, a professor at Texas A&M, had indicated that they felt like the costs to the beef system could be as high as $8.9 billion.

We've already heard some testimony about who's going to pay that bill. In our opinion, the consumers probably aren't going to be as willing to pay for that as what some may have hoped. As they talked about already, that cost is going to end up being passed down the chain. Certainly the cow-calf producer has no one to end up absorbing that cost.

Even though we are going to have motivation to comply with the law if self-certification is allowed, what are those calves actually going to be worth? They're going to be worth probably less than what they would have been worth because of all the added costs of implementing the law all the way through the beef system. That's certainly a big concern of ours. I want to be clear about the fact that, again, we have this important right as beef producers to be able to market and promote product made in the U.S.A. However, again, we believe it to be a market-driven approach.

I wanted to talk about a program that I am aware of. One labeling program is being promoted by Carolyn Carey in California. I had an opportunity to visit with her quite a bit this week. Miss Carey has done a tremendous job about promoting a "Born in the USA" label. She has put forth an effort to make the labeling program effective. In fact, her program has been approved by the Food Safety Inspection Service at USDA. She has also had a tremendous interest in her program and is currently marketing beef in the San Francisco Bay area as "Born in the USA."

Based on producer participation as well as consumer interest, Miss Carey's labeling program has certainly been a success. Under her program, producers and processors alike are required to keep information that guarantees the accuracy of this label. I brought a copy of this label with me. That's the label that goes on that product that they're labeling in the retail chain. My point is that a vol-

untary program, if the producers are willing to do what it takes to verify that label under the current program, can be successful.

Again, if there are markets out here in the country with consumers who are willing to pay extra to verify this trail or to pay extra for a product that is labeled in the USA, we definitely want to give producers the opportunity to do that. That's why the markets should drive this issue.

It was interesting, the comments about out of 22,000 calls to the Schnuck's store, only nine consumers had indicated about country of origin or country of origin and the product. We believe consumers are more concerned about egg food safety, making sure that they purchase a product that is very safe and wholesome for the family that they can obviously serve. Certainly consumers will brand rate it—brand or Kraft or what have you—all over the stores and are more brand conscious about products maybe than they are of country of origin.

We certainly believe a market-driven approach that, if there are segments in the country and obviously out in San Francisco there are retailers and there are places—that people are demanding this type of product and identification, that producers certainly have that opportunity to participate in that. There are several reasons involved.

Again, I want to finally stress the urgency of this issue. Cow/calf producers sold this fall. Again, we have to gear up this industry of being able to meet the demand of people that are buying our cattle, which has already been stated, and certainly the Missouri Cattlemen's Association wants to promote the beef that our members produce and are proud of the label of USA.

The challenge is in identifying a labeling system that will help us do that and not put us at risk. I want to commit to working with you and your staff and all these producers to identify changes in the law or regulations that will help accomplish this task. Thank you very much.

The CHAIRMAN. Go ahead.

Mr. O'BRIEN. I just want to make a couple of comments on the general retailers, though. In the first place, this seems to be—and I am kind of a minority here because I am the produce guy and not a meat guy. I heard from a couple of panelists that fruits and vegetables will be easy. It will not be very easy. It will be very laborious, and it'll be very difficult for us to keep records. Keep in mind that you are asking us to keep records at store level where you can walk in and ask the produce manager or——

The CHAIRMAN. Explain the laborious part.

Mr. O'BRIEN. The laborious part is keeping the records at store level. For example, bananas, where do we grow bananas from in the United States? They come from South America, and they come from Central America, and they're marked that way. Now, the banana code for our warehousing system is the same, and it goes to all stores. We can track it to the back door, but we cannot track it to the store, whether it comes from Costa Rica or whether it comes from Nicaragua. It says to keep bananas.

The produce system's not all that easy. We've got a PLU code for an asparagus. It is the same PLU code. It is an industry code for asparagus whether it comes from Peru, California, or whether it

comes from Mexico. To keep those records at store level when we've got possibly asparagus from Peru and Mexico within our system, we are not really sure how to do this.

What we have to do is to really overhaul our warehousing system and our invoicing system and start over. That's going to be very expensive. That's not just Schnuck's Markets. It is the entire industry, and we are not sure how we are going to do that. It is not just meat. It is produce and the seafood, too. I want to make that point. The other point I want to make is on self-certification. It sounds very——

The CHAIRMAN. Let me see if I can establish some consensus here on some of this. I will get back with you on that. You are talking about the extra cost to retailers. You talked about 40 or 50 million per plant. I want to get into why you think it is 40 or 50 million per plant. Now, are we in agreement that to the extent that this generates extra costs, those will, at least in large part, get passed down the chain to the producers? Does anybody disagree with that?

Mr. BULL. Senator Talent, just a comment on that. We have increased our marketing budget from 10 years ago from half a million dollars to over $20 million. That is all in marketing and branding products. We totally support that as a way to bring revenue into the industry. All of our brands have sent back a revenue that goes to producers. They're very expensive.

Make no mistake that what Mr. O'Brien's bringing up are very real costs of trying to identity preserve different things to our system. If we come up with a self-certification system at the ranch, that may save that cost burden there. It doesn't get the fee line out of their cost burden in trying to make sure their segment is properly managed. Those cattle can go from pen to pen. It sure doesn't relieve my burden in my packing plant to identity preserve those animals more to the retailer as well.

To address my costs, $40- to $50 million would be the costs if we tried to take each and every animal coming through our business and tried to identity preserve that animal through the—and as I said in my testimony, we can't afford to do that. What we would have to do is take alternate ways of trying to come up with a way of identity preserving batches of animals to try and bring that cost down.

It would bring it down significantly, but still it would be a $15- to $20 million per plant to re-tool to try and identity preserve even batches of animals on this type of level to our modern packing facilities today.

The CHAIRMAN. The point that Ken made was that there was a great danger of this getting passed down to the producers, as I understood it.

Mr. THORNSBERRY. I disagree with that. I disagree quite adamantly as a matter of fact. If you read the law and I am assuming that everybody has sat down and read the law. With the words of the law, this is a retail law. The onus of this law is on the retailers. I am sorry, but that's the way it was written. That's the way it passed. That's the way it was signed. It is their responsibility to identify the product, nobody else.

I agree with Ken. Most of our Missouri producers are sophisticated enough to identify their own cattle. The idea that nobody has any records of any kind is ridiculous. I deal with people every day as a veterinarian. I give them a bill. I show them where I worked the cattle and how many I worked. How many calves I castrated. How many heifers I vaccinated. Every farmer has these records and has to have them for IRS and tax purposes. That's what the USDA says it requires.

Now, I do agree with Ken that if we are forced to deal with a third-party verification subcommittee does everything it can to make sure that common sense does prevail, that these costs are as low as possible, because I am concerned otherwise they will get passed on.

Let me talk about what you said about third-party verification. I disagree with you about this, Max. The Department, whatever its other failures in this, is, I believe, correct in assuming that it is supposed to enforce this in such a way that will allow for meaningful audits and checks. In other words, it shouldn't assume that Congress passed a law that said, OK, it is very important that this be done, but you can just take everybody's word for the fact that it is being done.

Mr. THORNSBERRY. I don't mean to imply that. We do have the records to back up our own—they were there. What I am saying is they should not allow the packing industry to force third-party verification on us when the USDA does not require third-party verification anywhere in the system that I am aware of. If I sign up for drought resistance and I walk in there, I sign my name. That's all they require.

I am not saying that because it does have to be born and bred in the U.S. that it should not require some verification. Who's going to be the third party? Is it going to my pastor? Is it going to be my veterinarian? Is it going to be a local lawyer? Is it going to be a county commissioner? You know, if we get into that, we've opened a Pandora's box that is just phenomenal, in my opinion.

Plus, we should not be forced to give them that information. If the USDA wants it, that's fine. Let them audit it back here. I should not be forced to give that information to a packing company that is basically in an adversarial role with me. He's trying to buy my cattle as low as he can buy them, and I am tying to sell them as high as I can.

The CHAIRMAN. You are saying it is one thing to have to keep the records, but they shouldn't audit you through the packers.

Mr. THORNSBERRY. That's correct. The USDA can audit——

The CHAIRMAN. You don't think that this will resolve down the—let's forget about the idea we talked about just a second. If I understood you right, and you suggested it. It may be a gigantic way to reduce this burden, just documenting foreign produce or animals or whatever. I will get to you in just a second. Assuming we don't do that. Then if we do have to be able to identify domestic cattle, you don't think the record requirements will flow then on our producers?

Mr. THORNSBERRY. If we are allowed to follow the guidelines that William Sessions has given us—we all have feed bills, veterinarian bills, cow/calf records. We already have them. They're in our shoe

box, and we know where they are, and we can provide them when they're asked for.

The CHAIRMAN. I am pushing you on this because it is precisely the issue here you've thought a lot about all of this. Wouldn't you at least have to be able to prove that that cow that he sold at the auction barn or that went up through the system from him were the cows to which that record pertains? You know what I am saying. You can always produce the record saying yeah, I had a cow in here, and I bought this much feed and the rest of it, but how do we know that that's the cow that got sold?

Mr. THORNSBERRY. That's where you get into the provisions of a mandatory identification system. They're not asking to know the identification of every cow. They're asking to know if you owned this old cow.

Mr. O'BRIEN. Max, I am going to approach this from a retail standpoint. Because of the $10,000 fines, we have to insist on third-party audits because self-certification doesn't really mean a lot to us when it comes to identity of a shoe box. We need to make sure whether it is a tomato from Florida because we don't have ownership until it comes to our door. We are going to have to ask for a third-party audit because we are the ones that have to pay the $10,000 fines because it does come down to retail.

Mr. BULL. You are in a position where you have to——

The CHAIRMAN. Maybe to reference this point, the packing industry has no desire to be auditors of records. Just as the USDA has no desire to be auditors of the records. The last thing I want to do is to be training staff to go out and audit records.

We are seeing the packers come out and say we need some assurance these records are going to be accurate in trying to comply with the retailers and with our read on the law. Without our ability to understand with a high level of integrity when those animals are coming to us, we can't possibly label them correctly. Hoping that Max or his producers have these records properly done in a shoe box, when that animal comes into my plant, how will I know with any type of assurance that that animal is going to be properly labeled? I am the one putting up—so what are you going to require, then, from the producers you buy from? What kind of things would you anticipate as a buyer?

Mr. BULL. Again, Senator, we can only respond to what retailers have asked us to do and our interpretation of the risks. Clearly, if we are going to put a label on an animal, we need to know what that animal is. We need to have an assurance that that label is proper when we put it on. We are going to need an identification system that helps us, when that animal leaves our plant, we know those things. Clearly, we are going to need to know that before that animal leaves the plant.

The CHAIRMAN. What would satisfy that?

Mr. BULL. Here lies the biggest problem as far as we are concerned, and that's because the USDA is specifically limited from defining that structure. They're leaving it up to industry to try and figure that out. That's where we are all having the problem. I say to producers, for us to be able to comply to apply that proper label on there to meet their requirement and to give them that assur-

ance, we need to have that information prior to that animal coming to our plant.

Mr. OWENS. The third-party verification—let's assume that the mandatory identification system, as described in the law, that every animal's going to have to have identity from my producers. The third-party certification or self-certification. If the system requires hiring a third person to come inspect the farm operations of a guy that's got 5, 10, 15 cows, that might be the last straw.

If that system does stay in the same place, I believe that there is some benefit to self-certification by the person who delivers it to my market. He signs off that these cows were born and raised on my farm and that he does have the records to prove that. In the law, by him signing that affidavit, that should relieve the retailer packer or whoever's above—relieves them of that obligation. To me, the third-party verification on farms is—it will not be——

The CHAIRMAN. There's no reason why. Whatever the current law requires, if that's what everybody approves, we ought to do, because normally it is possible to do that with some kind of provision so that the tracing stops at the point where you reach self-certification. I can trace it back to this kind of cattle, and this herd is certified born and raised on this farm, and that's it. Then you are protected because that's good enough. You agree with that. They're required by law to accept that.

Mr. OWENS. I'd have to agree with Congressman Blunt because if the guy that serves my producers identify those cattle coming in, I assume that's probably the ideal situation on labeling systems.

The CHAIRMAN. That still leaves you all with all the——

Mr. O'BRIEN. Time.

The CHAIRMAN. I was intrigued, Mr. O'Brien, with your testimony because I hadn't thought of it. Actually this will require you to change all your labeling machines?

Mr. O'BRIEN. In the meat department, we have to change all our labeling. If we buy product that was born in Canada, raised and slaughtered in the United States right now, we don't have a labeling machine that would handle that long label. We have to work out the details in labeling, and plus the fact we have a line through all our stores.

As you are working through boxes and if the next box changes, you have to change that label. You have to stop the assembly line for "Manufactured in the United States" and start over. That's going to really slow down our activity. The biggest point is our warehouse will not handle it right now. It just doesn't handle that. We'd have to completely buy a new warehousing system and inventory system that we are required to keep in stock for 2 years, whether it is born and raised in the United States or not.

The CHAIRMAN. It doesn't seem plausible, but the very fact that you are required to keep track of something new is going to require you to change your system. Now, whether you can do it with software or something, that's another issue.

Mr. O'BRIEN. Well, that's something we are looking into and trying to figure out how to do. You have to think about the tonnage that we run through our warehouse and our produce department and meat department and seafood department. It is huge. That's how we operate. We operate as a buying business, and we only

make a penny out of every dollar; that's it. We turn that thing three times a week.

The CHAIRMAN. All right. We have another panel, and I have asked——

Mr. DISSELHORST. Senator, many of our members are all concerned about liability issues that come back to them as producers, whether they will be able to generate beef business in a commodity-based business, where if there had been e. coli or some breakouts, that break usually stops at the processors.

Obviously, with this type of auditable trail, that's not one of the liabilities that's going to be on producers. It is not fair to someone who may be unable to produce or purchase liability insurance for issues such as this, whether it be injectionsites, what have you. That is a concern, and something I'd like your committee to at least talk with the insurance industry about so we can get some answers.

The CHAIRMAN. Well, I will say if self-certification is the answer to the extent that the answer is on the part of the producer, you are right, Max. We need to go over the law again and make certain about what it says. That's an unusual enough thing. Well, you are right. In agriculture it is a little bit less unusual. Maybe they do have the liability to do it. I am saying what's the simplest way to get us to that point? We will wrap things up here, and I thank you all for coming. It is been a vigorous and good panel. I will excuse you and then ask the next panel to come up, Mr. Kremer and Mr. Day.

[The prepared statement of Mr. Disselhorst can be found in the appendix on page 103.]

The CHAIRMAN. I am pleased to have this last panel and maybe get a larger overview from Mr. Kremer and Mr. Day. Let's start with Russ Kremer who is the president of the Missouri Farmers Union.

STATEMENT OF RUSS KREMER, PRESIDENT, MISSOURI FARMERS UNION

Mr. KREMER. Thank you, Senator Talent. I truly appreciate this opportunity to testify before this committee regarding the country-of-origin labeling law passed by Congress as a provision of the 2002 Farm bill. My name is Russ Kremer. I am a diversified livestock producer and president of the Missouri Farmers Union. I am going to abbreviate this here to try to help you out. We believe that the mandatory country-of-origin labeling law, long supported by Farmers Union and other farm, ranch and consumer groups, is the single most important effort to help ensure the survivability and enhanced economic opportunities for the U.S. independent livestock and produce farmers.

We have supported mandatory country-of-origin labeling of agricultural commodities and products as a way to provide consumers with the knowledge to make more informed choices about the products they purchase and to serve as a beneficial marketing tool for U.S. producers. In the global economy, our farmers and ranchers play on an unlevel field. We are at a disadvantage because of the value of our dollar and are oftentimes forced to compete with countries that produce in a system with much lower labor, environ-

mental and sanitation standards than our U.S. producers and processors produce under.

I am an independent producer who is very proud of what I produce. I feel that we produce a Cadillac product that is safe, wholesome, free of unnecessary chemicals and additives, processed under very rigid high standards for sanitation, labor and environment. Yet when I take this product to marketplace, this Cadillac product is not differentiated from the lower value imported model with its uncertain assurance of quality and safety. I wish there was a consumer testifying today because consumers overwhelmingly throughout the U.S. would overwhelmingly support this law.

First, there was a study by Colorado State that found 73 percent of consumers in Denver and Chicago surveyed last March would be willing to pay much more for beef with a country-of-origin label. On average, those respondents would be willing to pay an 11 percent premium for a country-of-origin label on a steak and a 24 percent premium on hamburger meat. Preference for labeling source of origin, a strong desire to support U.S. producers. These are some things that we found as a farmers union to develop a value-added meat cooperative.

The CHAIRMAN. Mr. Kremer, before you go on, let me ask: Are all of you in agreement that these costs are going to get passed on, can everybody agree with that? If it is true that some people are willing to pay a little bit more, some of the one-time costs, in particular, might get passed on to the underbrush.

In other words, you might be able to charge a little bit more. Nobody wants to raise the costs, particularly if it is a one-time thing for a new warehousing system or something like that. It gets passed on and dumped. You raise a good point. If those surveys are correct, then there might be more money coming in to the system to support it.

Mr. KREMER. We've also done studies in the area around St. Louis where consumers would be willing to pay a 10 to 20 percent premium if they knew where the product came from. We could very well pass the volume to——

The CHAIRMAN. Maybe St. Louis is the front doorstep, but the beautiful backyard is right here in our area.

Mr. KREMER. We've talked about the misinformation, about some of the horrors that's happened, and quite frankly we feel that that's a misinterpretation we have of the guideline that we were asked to follow as far as mandatory. People have made that seem like it is a mandatory requirement, and we have not written the rules yet. That's why we are here today, to interpret that and find practical solutions.

Our organization's deal is that voluntary labeling is not the answer. We've had this for 30 years, and we've had various success with that. I really feel like COOL is a great measure, and the intent is clear, and it can be implemented with little burden to producers at a minimal cost. Last year in Southwest Missouri, a mandatory country-of-origin labeling for meat for very little costs at all was implemented quite successfully. In fact, it is a society bill, and retailers elected not to have anything to do with that.

That's what the intent of this law is to do, to promote American meat. To the extent existing record systems and import information

can be utilized and tailored to meet country-of-origin labeling requirements for consumer notification, the less costly and more efficient the labeling system will be for all parties. The most practical one that has been brought up and effective means of verifying the country of origin is to accurately identify the produce or meat and animals that come into this country and to strongly enforce the verification and traceability of those products.

The vast majority of U.S. livestock and crop producers do not import any livestock or produce products that would subject their operations to foreign origin verification. If import labeling procedures are strictly enforced, then all other products could be presumed U.S. produced, thus preventing burdensome record keeping and verification procedures imposed on those producers who choose to continue a "domestic only" production system.

Programs such as the School Lunch Program currently operate under similar procedures. Farmers and ranchers who do market imported products should have an appropriate record system. Existing identification programs, such as health certificates from the USDA Animal and Plant Inspection Service or import information gathered by U.S. Customs Service can be coordinated and used to identify the country of origin for imported commodities.

We also suggest that USDA consider the following when writing the rules for mandatory COOL:

No. 1, we've heard this before but establish a grandfather or grandmother clause that will allow all livestock presently in the United States to be considered products of the U.S.

No. 2, USDA must ensure that retailers cannot impose a greater burden on suppliers than is required by the law or the rules. USDA can accomplish this by stating that only USDA may conduct audits, and all suppliers and retailers must rely solely on the markings on livestock or representations made on sales transaction documents.

No. 3, USDA should interpret the law to maximize the number of commodities that will be labeled. For example, enhancing a commodity by adding water, flavoring should not exclude a commodity from the labeling.

In conclusion, we are very excited about the potential benefits of a successfully implemented COOL law. I believe that stronger farmer-consumer relationships will be forged. Consumers will support our U.S. farm families and demand and choose our quality products. Family farm operations will become more profitable, and the consumer will be assured safe, wholesome food. It is a win-win situation. Thank you.

[The prepared statement of Mr. Kress can be found in the appendix on page 106.]

The CHAIRMAN. The next witness is Mr. David Day who's a board member of the Missouri Farm Bureau.

STATEMENT OF DAVID DAY, BOARD MEMBER, STATE BOARD OF DIRECTORS, MISSOURI FARM BUREAU

Mr. DAY. Good afternoon, Senator. My name is David Day. I am a cattle producer from south central Missouri, and I serve on the Missouri Farm Bureau State Board of Directors. The Missouri Farm Bureau is the state's largest general farm organization with over 99,000 family members. In addition, our organization is part

of the American Farm Bureau Federation which represents a majority of the nation's livestock producers. The Farm Bureau appreciates the opportunity to comment on country-of-origin labeling. Senator Talent, we want to say a very special thank you to you for your continued interest and leadership on this issue.

Farm Bureau does support mandatory country-of-origin labeling. Many farmers and ranchers feel that the products they grow in the United States should be labeled as a product of the United States at the retail level. Today, more and more products are being imported to the United States, giving our consumers greater choices in the marketplace.

By and large, people know little about where these products originated. By including country-of-origin labeling in the 2002 Farm bill, we believe Congress intended to provide a program that would help consumers make informed decisions when purchasing products at the retail level and help producers receive a value-added return on their agricultural products.

While our organization supports COOL, we are concerned about the impact the unintended consequences could have on our state's livestock producers. USDA has done an admirable job of developing rules for the voluntary program, and we applaud their willingness to seek input from those the regulations will affect the most.

Currently, many producers have misconceptions about COOL because they have not received adequate information to determine how the program will affect their operations. In addition, under the current USDA guidelines for voluntary labeling, we are uncertain of the benefits or costs associated with the program. It is crucial that USDA develop a program that does not hinder producers with burdensome regulations or significantly increase their production costs.

In labeling products as to the country of origin, we have several concerns on how covered commodities will be traced from the farm level to the retail level. First, we strongly believe that the statute prohibits USDA from instituting the proposed record keeping requirement. This has been talked about earlier. The statute clearly states and I quote, "The Secretary shall not use a mandatory identification system to verify the country of origin of a covered commodity," end quote. Nevertheless, the Agricultural Marketing Service, or AMS, proposes that each producer and others in the supply chain keep a record of every covered commodity for at least 2 years.

The proposed rule also mandates that these records be available for inspection by AMS to verify that each animal, or covered commodity, is of the origin claimed. The only possible way that we see to accomplish such a record keeping requirement would be to have every animal identified. Again, that would be a mandatory identification system, which is specifically prohibited.

Second, we believe that any record keeping requirement must be uniform in nature. Since AMS does not outline a uniform record keeping system, each retailer may implement a system that differs from others. As a result, producers may lose opportunities as they could be forced to select which supply chain they enter. We believe there should be some degree of uniformity to insure all market opportunities are maintained for all producers.

Last, producers will not be prepared to meet mandatory guidelines in September 2004 because as it is written now, the older animals will not be documented for country of origin. Once outstanding questions about the program are resolved, we strongly recommend that USDA implement a transition period as the voluntary guidelines become mandatory to prevent producers from being adversely effected. In addition, we believe all members of the supply chain must actively be involved in developing the final program rules.

Again, we commend you, Senator, and your subcommittee for holding this hearing. In closing, I would like to enter into the record comments that Missouri Farm Bureau sent to the USDA.

[The information referred to can be found in the appendix on page 112.]

[The prepared statement of Mr. Day can be found in the appendix on page 110.]

The CHAIRMAN. Sure. No objection to including it in the record. It seems to me that one of you said something about we have to be doing something about cows that are currently in the system where nobody's kept records on them because nobody knew they had to do that. You both talked about grandfathering in some respect.

As I said, I don't know if that gets us past the other issues because you are still going have to prove it is a grandfathered cow. At least as to that, would you agree that we have some consensus? We need something to make certain there is no liability on people for those cows they've had in the system for some time. Is there agreement on that?

Mr. BULL. Yes, there is.

Mr. O'BRIEN. Export for everything presumed, and basically let everything that's currently in the system now——

The CHAIRMAN. Be presumed USDA.

Mr. O'BRIEN. Be presumed U.S. produced. That's the simplest way.

The CHAIRMAN. You know, I do think just from what I have heard that both sides of this issue are open to some simple changes. I do want to say we are all frustrated with the bureaucracy and nobody more so than I. We have to allow for the possibility that they may be correct in saying the statute doesn't give them a lot of flexibility in all of these areas.

This just might require somebody else on the staff. Nobody in Congress is going to want to reopen this. To get some consensus that some simple changes or common sense changes allow us to get 95 percent of what we want here while relieving everybody of a bunch of costs, then surely that's a direction that we ought to go in.

Mr. BULL. I agree. If we can track the animals that are imported, that would certainly lighten the burden on the producer out in the field. Again, the fact that it is common sense may be the barrier here, but I do think it makes a lot of common sense to go that route.

The CHAIRMAN. What I found is that there's a huge percentage of what you are trying to do, everybody agrees on doing, and they want to do. The problems arise in the more extreme cases or the

unusual case. It would be better if everybody would just lighten up a little bit.

OK. What I am saying is somebody tells you there may be one cow in a herd of 10,000 that may be mismarked. So what? We have to allow some flexibility to be in this kind of rule in those circumstances so you don't have to recall the whole thing or send it back. Nobody wants to do that, not packers, not retailers, nobody.

Mr. O'BRIEN. The overwhelming response in the event is that producers say don't make us the victims. Let's come up with something appropriate, and I feel we couldn't do that.

The CHAIRMAN. I don't want to make anybody a victim of this because part of the problem is this. If anybody is really nailed, anybody in the chain, that cost is going to get spread all over the place. If we can make some common sense changes that preserve those kind of things—or get them to do it. Get the Department to do it and preserve what we are trying to do and lessen the costs and trouble for everybody, then clearly, we ought to move in that direction.

This lead that we got from Congressman Blunt, about marking and tracing only the animals we import. He raised all sorts of issues there. It is a very promising lead. We have to see what the trade laws would say. You know, on the other hand, after the way the Europeans treated our genetically modified product, I don't think that we should go to any great length to warrant reviews of trade laws ourselves.

Obviously, I am wrapping up. Do any of you have anything you want to add? I do want to make clear before we adjourn the hearing that everybody has 5 days to submit a written statement. That includes members of the audience. I have a card here with the address. It'll be right up here. If anybody wants to, they can copy off the address or the e-mail address.

You send your comments to Robert E. Sturm, S-t-u-r-m, who is the Chief Clerk of the Committee on Agriculture. He is at 328-A Russell Senate Office Building, Washington, DC, 20510. E-mail address is Robert underscore Sturm, S-t-u-r-m, at agriculture dot senate dot gov (robert—sturm at agriculture.senate.gov). Or if you just want, you can get the testimony in my office or Congressman Blunt's office. I am sure they will be happy to get that. Thank you all again, and this subcommittee is adjourned.

[Whereupon, at 12:22 p.m., the Subcommittee adjourned.]

APPENDIX

APRIL 22, 2003

Opening Statement for Senator Talent
Chairman
Subcommittee on Marketing,
Inspection, and Product Promotion
Committee on Agriculture, Nutrition and Forestry
United States Senate

Subcommittee hearing to examine the potential burdens associated with the new country-of-origin labeling (COOL) law.

Thank you for coming today to discuss this very important issue; country of origin labeling. Congressman Blunt, thank you for joining me at this hearing. Thank you Under Secretary Hawks for coming to Joplin.

In the farm bill passed last year, the United States Department of Agriculture was required to promulgate regulations for mandatory country of origin labeling for beef, pork, lamb and other fresh commodities, by September 30, 2004. Right now these industries are wading through the uncertainties of a **voluntary** regulation, while cattle born today must meet the requirements of the **mandatory** program. The official implementation date for mandatory COOL is not until 2004, but the beef, lamb and pork industries must prepare now for the auditing and reporting provisions of the law. Producers need to know what they will be expected to provide. This issue must be examined and addressed.

I think there are a few things where we can all agree:

1.) Country of origin labeling is a good idea in principle. It is safe to assume to buy American beef and pork, rather than imported products, and who doesn't want to know where their food is from? The question is at what cost.

2.) The current law creates a great burden for every link of the livestock industry chain. We need to work together to find a solution that everyone works for everyone. Today we will hear a variety of proposals and I look forward to exploring many different ideas that our witnesses will reveal in their testimony.

Earlier this year, I sent a letter to Under Secretary Hawks requesting that the department hold a series of listening sessions around the country to give producers an opportunity to share their concerns and to get information about the new regulation. USDA has agreed to these listening sessions. Thank you Under Secretary Hawks both for agreeing to hold listening sessions and for agreeing to testify at this hearing.

I have always been a proponent of value-added agriculture. If identifying and labeling beef, pork and lamb brings greater profits to American producers, then I strongly support labeling. However, as the former chairman of the House Small Business Committee, I know that new regulations often bring about new regulatory burdens. I look forward to the testimony today. I hope to gain a better understanding of what effects COOL will have on farmers and consumers here in Missouri.

Cattle, Beef, Muscle Cuts of Beef, Ground Beef

Seed Stock / Cow Calf	Stocker / Backgrounder	Preconditioning /Feedlot	Slaughter/ Fabricator	Fabricator/ Processor	Distributor
Responsibility					
Provide enough information for an auditor to verify the origin and ownership of the animals identified and to verify the stated designation. Properly identify and record all animals according to the designation	Identify and segregate animals as to the origin designation. Properly identify all animals sold. Maintain the integrity of the identification. Maintain ownership transfer.	Upon receipt properly identify animals according to their designation. Segregate and control animals. Properly identify all animals sold. Maintain ownership records.	Segregate animals according to the country designation. Segregate and control carcasses throughout the system and properly label product according to the country designation. Document origin of all product.	Transfer labels and identification of all products processed. Operate under a labeling program. Inventory all products according the origin.	Maintain the integrity of labeled product. If repackaged, transfer the original identification.
Examples of Records and Activities that may be useful.					
Birth records	Transportation records	Transportation records	Transportation records	Product inventory	Invoices
Receiving records	Receiving Records	Receiving Records	Receiving Records	Receiving Records	Receiving Records
Purchase records	Purchase Records	Purchase Records	Purchase Records	Purchase Records	Purchase Records
Cow/Calf tag ID system	ID system	ID system	Plant ID system	Production Records	Sales records
Sales receipts	Sales Receipts	Sales Receipts	Sales Receipts	Sale Receipts	Sales Receipts
Feed bills	Feed bills	Feed bills	Carcasses ID	Label Inventory	Affidavits
Feeding records	Transfer of ID System	Pen records	Shipping manifest	Labeling requirements	Labeling requirements
Animal inventory	Feeding records	Feeding Records	Packaging records	Yield sheet	Inventory
Acreage inventory	Declaration documents	Shipping records	Weight tickets	UPC codes	Plant Establishment #'s
Site maps	Preconditioning Records	Rate of gain records – Yield records			
APHIS VS Forms	APHIS requirements	APHIS requirements			
Production estimates	VS Forms and Records	VS Forms and Records	VS Forms and Records		
Health records		Health Records			
Ownership records			FSIS labeling Reg	FSIS labeling Reg	FSIS labeling Reg
Segregation plan	Segregation plan	Segregation plan	Segregation plan	Segregation plan	Segregation plan
State Brand requirements	State Brand requirements	State Brand requirements			
Replacement activities	Replacement activities	Accounting process for inbound animals			
Beef Quality Program	Beef Quality Program	Beef Quality Program			
Breeding stock information					

The examples of documents and records listed in this table, although extensive, are not inclusive of all documents and records that may be useful to verify compliance with the Country of Origin Labeling provisions of the 2002 Farm Bill. Additionally, maintaining documents and records such as those listed as examples will not necessarily ensure compliance. The documents listed are examples only and are for the sole purpose of providing information for producers, processors, and retailers to consider when establishing records for verification purposes. During a compliance audit conducted by USDA, auditors will review any and all documents to the extent necessary to arrive at an accurate decision on the level of compliance.

Farm-Raised Fish

Hatchery /Nursery Pond	Grow-out Ponds	Slaughter/ Processor	Further Processor	Distributor
Responsibility				
Provide enough information for an auditor to verify the origin and ownership of all shipments of fry /fingerlings. Properly record all hatching production according to the designation.	Identify and segregate fingerlings as to the origin designation. Properly label and identify all marketable size fish sold. Maintain the integrity of the identification. Maintain ownership transfer records.	Segregate fish according to the country designation. Segregate and control throughout the system and properly label product according to the country designation. Document origin of all product.	Transfer labels and identification of all products processed. Operate under a labeling program. Inventory all products according the origin.	Maintain the integrity of the product. If repackaged, transfer the original identification.
Examples of Records and Activities that may be useful.				
Hatching records	Transportation records	Transportation records	Product inventory	Invoices
Brood stock records	Receiving Records	Receiving Records	Receiving Records	Receiving Records
Receiving records	Purchase Records	Purchase Records	Purchase Records	Purchase Records
Purchase records	Sales Receipts	Plant ID system	Production Records	Sales records
Sales receipts	Feed bills	Sales Receipts	Sale Receipts	Sales Receipts
Feed bills	Feeding records	Shipping manifest	Label Inventory	Labeling requirements
Feeding records	Stocking records	Inspection records	Labeling requirements	Inventory
Site maps	Replacement activities	Quality Control records	Yield sheet	Segregation plan
Production estimates	Segregation plan	Segregation plan	UPC codes	UPC codes
Health records	Feed per acre rate	Production records	Segregation plan	
Owner ship records	Pond yield records	Inventory records		
Replacement activities	Locations	UPC codes		
	Site maps	Sampling Records		
	Pond acreage	Yield Records		
	Harvesting records	Location of harvest		

The examples of documents and records listed in this table, although extensive, are not inclusive of all documents and records that may be useful to verify compliance with the Country of Origin Labeling provisions of the 2002 Farm Bill. Additionally, maintaining documents and records such as those listed as examples will not necessarily ensure compliance. The documents listed are examples only and are for the sole purpose of providing information for producers, processors, and retailers to consider when establishing records for verification purposes. During a compliance audit conducted by USDA, auditors will review any and all documents to the extent necessary to arrive at an accurate decision on the level of compliance.

Hogs, Pork, Muscle Cuts of Pork, Ground Pork

Sow /Farrow	Nursery	Feeder /Finish	Slaughter / Processor	Processor	Distributor
Responsibility					
Provide enough information for an auditor to verify the origin and ownership of all animals identified. Properly identify and record all animals according to their designation	Identify animals as to the sow / farrow origin. Maintain the integrity of the identification system. Document all movements of animals.	Upon receipt properly identify animals according to their designation. Segregate and control animals. Properly identify all animals sold. Maintain ownership records.	Segregate animals according to the country designation. Segregate and control carcasses throughout the system and properly label product according to the country designation. Document origin of all product.	Transfer labels and identification of all products processed. Operate under a SOP the addresses labeling. Inventory all products according to the origin.	Maintain the integrity of the product. If repackaged, transfer the original identification.
Examples of Records and Activities that may be useful.					
Sow birth records	Transportation records	Transportation records	Transportation records	Product inventory	Invoices
Replacement records	Receiving Records	Receiving Records	Receiving Records	Receiving Records	Receiving Records
Purchase records	Purchase Records	Purchase Records	Purchase Records	Purchase Records	Purchase Records
Identification system	ID system	ID system	Plant ID system	Production Records	Sales records
Sales receipts	Loss records	Sales Receipts	Sales Receipts	Sale Receipts	Sales Receipts
Feed bills	Feed bills	Feed bills	Kill records	Label Inventory	Affidavits
Feeding records	Feeding records	Barn activity records	FSIS slaughter records	Labeling requirements	Labeling requirements
Animal inventory	Barn activity records	Feeding records	FSIS labeling Reg.	Yield sheet	Inventory
Lose records	Declaration documents	Shipping records	Production records	UPC codes	Plant Establishment #'s
Production records	Production records	Rate of gain records	Segregation plan	FSIS labeling Reg.	FSIS labeling Reg.
Health records	Health records	Health Records	Animal handling records	Segregation plan	Segregation plan
Maps of operation	Maps of operation	Loss records		Computer records	UPC codes
State requirements	State requirements	Segregation plan			Computer records
Environmental records	Environmental records	Accounting process			
Inventory records	Animal handling records	State requirements			
Animal handling records		Environmental records			
PQA Records	PQA Records	PQA Records			
		Animal handling records			

The examples of documents and records listed in this table, although extensive, are not inclusive of all documents and records that may be useful to verify compliance with the Country of Origin Labeling provisions of the 2002 Farm Bill. Additionally, maintaining documents and records such as those listed as examples will not necessarily ensure compliance. The documents listed are examples only and are for the sole purpose of providing information for producers, processors, and retailers to consider when establishing records for verification purposes. During a compliance audit conducted by USDA, auditors will review any and all documents to the extent necessary to arrive at an accurate decision on the level of compliance.

Peanuts

Farm Operator / Producer / Custom Broker Importer	Buying / Warehouse – Storage Operator	Sheller / Handler / Custom Blancher-Remiller / Processor / Crusher-Accumulators
Responsibility		
Provide enough information for an auditor to verify the farm location where the product was grown. Identify product to the country of origin labeling.	Maintain the integrity of the identification system. Segregate peanuts according to the country designation. Segregate and control throughout the system and properly label product according to the country designation.	Maintain the integrity of the identification system. Identify and segregate individual lots as to the country of origin. Properly label or identify all peanuts
Examples of Records and Activities that may be useful.		
Official Inspection Certificates	Warehouse storage receipts	Conformations and memorandums of Purchase
F&V-95 Worksheet	Daily inventories by lots	and sales
Harvest Records	Weight tickets	Invoices on purchases
Delivery Tickets	Receiving records	Receiving records
Weight Tickets	Official Inspection Certificates	Sales tickets
Pesticide application record	F&V-95 Notesheets	Account of Sales
Site maps	Invoices and Purchases	Remilling / Blanching/ Transfer Records
Warehouse storage receipts	Ledger records of purchases	Daily inventories by lots
U.S. Customs Entry Forms	Unloading tickets	Ledger records of purchase
Purchase Records	U.S. Customs Entry Forms	Mill Out-turn records
Lost and damage claims documents		UPC codes
Production and Sales Contracts		PLU labeling information
Seed, seedling or plant purchases		U.S. Customs Entry Forms
Sales tickets		Official Inspection Certification and Positive
		Lot and Identification
		Tags and Seals

The examples of documents and records listed in this table, although extensive, are not inclusive of all documents and records that may be useful to verify compliance with the Country of Origin Labeling provisions of the 2002 Farm Bill. Additionally, maintaining documents and records such as those listed as examples will not necessarily ensure compliance. The documents listed are examples only and are for the sole purpose of providing information for producers, processors, and retailers to consider when establishing records for verification purposes. During a compliance audit conducted by USDA, auditors will review any and all documents to the extent necessary to arrive at an accurate decision on the level of compliance.

Perishable Agricultural Commodity

Grower / Producer	Packer / Shipper / Processor	Wholesaler / Distributor
Responsibility		
Provide enough information for an auditor to verify the farm location where the product was grown. Identify and label product to the country of origin.	Maintain the integrity of the identification system. Segregate commodities according to the country designation. Properly label and control product according to the country designation.	Maintain the integrity of the identification system. Identify and segregate individual lots as to the country of origin. Properly label or identify all product sold.
Examples of Records and Activities that may be useful.		
Official Inspection Certificates	Confirmations and memorandums of purchases and sale	Conformations and memorandums of purchase and sales
Confirmation and Memorandums of Sales	Invoices on purchases	Invoices on purchases
Harvest Records	Receiving Record	Receiving records
Delivery Tickets	Sales tickets	Sales tickets
Weight Tickets	Accounts of Sales	Account of Sales
Pesticide application record	Daily inventories by lots	Records on repacking and relabeling
Site maps, acreage inventory	Ledger records of purchases	Daily inventories by lots
Purchase Records	Packout records	Ledger records of purchase and sales
Lost and damage claims documents	UPC Codes	Packout records
Production and Sales Contracts	PLU labeling information	UPC codes
Seed, seedling or plant purchases		PLU labeling information
Sales tickets		
Carrier Manifest		
Bill of Landing		
Pick tickets		
Ledger records of sales		
Copies of statements (bills) of sales to customers		
Production Records		

The examples of documents and records listed in this table, although extensive, are not inclusive of all documents and records that may be useful to verify compliance with the Country of Origin Labeling provisions of the 2002 Farm Bill. Additionally, maintaining documents and records such as those listed as examples will not necessarily ensure compliance. The documents listed are examples only and are for the sole purpose of providing information for producers, processors, and retailers to consider when establishing records for verification purposes. During a compliance audit conducted by USDA, auditors will review any and all documents to the extent necessary to arrive at an accurate decision on the level of compliance.

Sheep, Lamb, Muscle Cuts of Lamb, Ground Lamb

Ewe / Lambing/ Weaning	Feeder / Finisher	Slaughter / Processor	Processor	Distributor
Responsibility				
Provide enough information for an auditor to verify the origin and ownership of all animals as identified. Properly identify and record all animals according to their designation.	Upon receipt properly identify animals according to their country designation. Segregate and control animals as necessary. Properly identify all animals sold. Maintain ownership records.	Segregate animals according to the country designation. Segregate and control carcasses throughout the system and properly label product according to the country designation. Document origin of all product.	Transfer labels and identification of all products processed. Operate under SOP's that address labeling. Inventory all products according to the origin.	Maintain the integrity of the product. If repackaged, transfer the original identification.
Examples of Records and Activities that may be useful.				
Lamb birth records	Transportation records	Transportation records	Product inventory	Invoices
Replacement records	Receiving Records	Receiving Records	Receiving Records	Receiving Records
Purchase records	Purchase Records	Purchase Records	Purchase Records	Purchase Records
Identification system	ID system	Plant ID system	Production Records	Sales records
Sales receipts	Sales Receipts	Sales Receipts	Sale Receipts	Sales Receipts
Feed bills	Feed bills	Kill records	Label Inventory	Affidavits
Feeding records	Barn activity records	FSIS slaughter records	Labeling requirements	Labeling requirements
Animal inventory	Feeding records	FSIS labeling Reg.	Yield sheets	Inventory
Lose records	Shipping records	Production records	UPC codes	Plant Establishment # 's
Production records	Rate of gain records	Segregation plan	FSIS labeling Reg.	FSIS labeling Reg.
Health records	Health Records	Animal handling records	Segregation plan	Segregation plan
Maps of operation	Loss records	Carcasses Import documents	Computer records	UPC codes
State regulations	Segregation plan	APHIS VS requirements		Computer records
Scrapie Requirements	Scrapie Requirements	FSIS Import requirements		
Animal handling records	Accounting process	Weight tickets		
Flock identification	State regulations			
Lamb improvement Program	APHIS VS requirements			
	Animal handling records			

The examples of documents and records listed in this table, although extensive, are not inclusive of all documents and records that may be useful to verify compliance with the Country of Origin Labeling provisions of the 2002 Farm Bill. Additionally, maintaining documents and records such as those listed as examples will not necessarily ensure compliance. The documents listed are examples only and are for the sole purpose of providing information for producers, processors, and retailers to consider when establishing records for verification purposes. During a compliance audit conducted by USDA, auditors will review any and all documents to the extent necessary to arrive at an accurate decision on the level of compliance.

Wild Fish

Harvesting Fish /US Flagged Vessel	US Flagged Ship/Slaughter/ Processor	Further Processor	Distributor
Responsibility			
Maintain records of location where wild fish are being harvested. Maintain harvesting documentation from US Flagged ship.	Segregate fish according to the country designation. Segregate and control throughout the system and properly label product according to the country designation. Document origin of all product.	Transfer labels and identification of all products processed. Operate under a labeling program. Inventory all products according the origin.	Maintain the integrity of the product. If repackaged, transfer the original identification.
Examples of Records and Activities that may be useful.			
Site maps	Transportation records	Product inventory	Invoices
Vessel records	Receiving Records	Receiving Records	Receiving Records
Harvesting records	Purchase Records	Purchase Records	Purchase Records
Brood stock records	Plant ID system	Production Records	Sales records
US Flagged Vessel ID	Sales Receipts	Sale Receipts	Sales Receipts
Production records	Shipping manifest	Label Inventory	Labeling requirements
Sales receipts	Inspection records	Labeling requirements	Inventory
Purchase records	Quality Control records	Yield sheet	Segregation plan
Receiving records	Segregation plan	UPC codes	UPC codes
	Production records	Segregation plan	
	Inventory records		
	UPC codes		
	Sampling Records		
	Yield Records		
	Location of harvest		

The examples of documents and records listed in this table, although extensive, are not inclusive of all documents and records that may be useful to verify compliance with the Country of Origin Labeling provisions of the 2002 Farm Bill. Additionally, maintaining documents and records such as those listed as examples will not necessarily ensure compliance. The documents listed are examples only and are for the sole purpose of providing information for producers, processors, and retailers to consider when establishing records for verification purposes. During a compliance audit conducted by USDA, auditors will review any and all documents to the extent necessary to arrive at an accurate decision on the level of compliance.

Notices

Federal Register
Vol. 67, No. 198
Friday, October 11, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket Number LS–02–13]

Establishment of Guidelines for the Interim Voluntary Country of Origin Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts Under the Authority of the Agricultural Marketing Act of 1946

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) amended the Agricultural Marketing Act of 1946 to require the Department of Agriculture's Agricultural Marketing Service (AMS) to issue country of origin labeling guidelines for voluntary use by retailers who wish to notify their customers of the country of origin of beef (including veal), lamb, pork, fish, perishable agricultural commodities, and peanuts. The guidelines contained within this notice include definitions that can be used by retailers and their suppliers and understood by other market participants, to facilitate the voluntary labeling or identification of commodities covered by this program by their respective country of origin. These voluntary guidelines also outline what the Agency believes represents the framework of a consumer notification, product marking, and recordkeeping program that would be required to carry out this program. AMS is committed to providing the industry and consumers with a workable voluntary program that will carry out the intent of the law. Public Law 107–171 also requires the Secretary to promulgate a regulation for mandatory labeling by September 30, 2004. Development of this mandatory regulation will begin in April 2003 and will likely be based on these voluntary guidelines from the current interim period as well as related input the Agency receives. AMS encourages submissions on the utility of these voluntary guidelines during the next 180 days. The forthcoming mandatory regulation will be developed through the rulemaking process, which will include a proposal and an opportunity for public comment. Although the benefits and costs of the voluntary program are difficult to quantify, the Agency believes that retailers will choose to participate if the benefits outweigh the costs. However, as the Agency moves toward the development of the regulation that will implement the mandatory program as required by Public Law 107–171, information concerning the benefits and the estimated or actual costs of implementing a program in compliance with the voluntary guidelines will be of great benefit to the Agency.

DATES: These voluntary guidelines are effective October 11, 2002. Submissions must be received by April 9, 2003.

ADDRESSES: Send written submissions to: Country of Origin Labeling Program, Agricultural Marketing Service, USDA, Stop 0249, Room 2092–S, 1400 Independence Avenue, SW, Washington, D.C. 20250–0249, or by fax to (202) 720–3499, or by e-mail to *cool@usda.gov*.

FOR FURTHER INFORMATION CONTACT: Eric Forman, Associate Deputy Administrator, Fruit and Vegetable Programs, AMS, USDA, by phone at: (202) 690–0262, or via e-mail at: *eric.forman@usda.gov*; or William Sessions, Associate Deputy Administrator, Livestock and Seed Program, AMS, USDA, by phone at: (202) 720–5705, or via e-mail at: *william.sessions@usda.gov*. Additional information may also be obtained over the Agency's website at: *www.ams.usda.gov/cool/*.

SUPPLEMENTARY INFORMATION:

Background

Section 10816 of Public Law 107–171 (7 U.S.C. 1638–1638d) amends the Agricultural Marketing Act of 1946 (AMA) (7 U.S.C. 1621 *et seq.*) to require retailers to inform consumers of the country of origin for covered commodities. The term "covered commodity" is defined in the law as muscle cuts of beef (including veal), lamb, and pork; ground beef, ground lamb, and ground pork; farm-raised fish and shellfish; wild fish and shellfish; perishable agricultural commodities (fresh and frozen fruits and vegetables); and peanuts. The terms "retailers" and "perishable agricultural commodities" are defined in the law as in the Perishable Agricultural Commodities Act of 1930 (PACA) (7 U.S.C. 499a(b)).

Interest has been expressed in expanding these covered commodities to include other commodities, such as pecans. The Department of Agriculture (USDA), however, does not have the authority to include commodities in this program other than those specified in the statute. For agricultural commodities that cannot be covered under these guidelines, the Department has different authority to develop voluntary user-fee programs to certify that a non-covered commodity is a product of the United States. Under such a program, a participating handler or processor could label its product as a USDA certified product of the United States. Any person interested in such a program should contact the Agricultural Marketing Service (AMS).

In the case of beef, lamb, and pork products, the law states that a retailer may use a "United States Country of Origin" label only if the product is from an animal that was exclusively born, raised, and slaughtered in the United States. However, in the case of beef, this definition also includes cattle exclusively born and raised in Alaska or Hawaii and transported for a period not to exceed 60 days through Canada to the United States and slaughtered in the United States. In the case of farm-raised fish and shellfish, the product must be fish or shellfish hatched, raised, harvested, and processed in the United States. For wild fish and shellfish, it must either be harvested in the waters of the United States or by a U.S. flagged vessel and processed in the United States or aboard a U.S. flagged vessel. In addition, the label must distinguish between farm-raised and wild fish products. In the case of peanuts and perishable agricultural commodities, they must be exclusively produced in the United States to carry that label.

To convey country of origin information to consumers, the law states that retailers may use a label, stamp, mark, placard, or other clear and visible sign on the covered commodity, or on the package, display, holding unit, or bin containing the commodity at the

final point of consumption. Food-service establishments—such as restaurants, bars, food stands, and similar facilities—are exempt.

The law makes reference to the definition of "retailer" in the PACA as the meaning of "retailer" for the application of country of origin labeling requirements. Under the PACA, a "retailer" is any person who buys or sells perishable agricultural products solely for sale at retail with a cumulative invoice value in any calendar year of more than $230,000. This definition excludes butcher shops, fish markets, and small grocery stores that either purchase fruit and vegetables at a level below this dollar volume threshold or do not purchase fruit and vegetables at all.

The law directs the Secretary to first issue guidelines for voluntary labeling and then, by September 30, 2004, to promulgate requirements for mandatory labeling. When the mandatory labeling program takes effect, the law states that the Secretary may require any person who prepares, stores, handles, or distributes a covered commodity for retail sale to maintain a verifiable recordkeeping audit trail. According to the law, under the mandatory labeling program, suppliers are required to provide information to retailers indicating the country of origin of the covered commodity. Although the law states that the Secretary shall not use a mandatory identification system to verify country of origin under the mandatory labeling program, it does state that the Secretary may use, as a model, identity verification programs already in place. The law also provides enforcement procedures for the mandatory labeling program that includes fines, civil penalties, and cease and desist orders for retailers, packers, or other persons for willful violations.

Key Components of the Law

These voluntary guidelines describe a program that allows retailers, as defined by the law, to label covered commodities by their country of origin. It is important to note that industry is not required to participate in this voluntary labeling program that will be in effect until a mandatory program is implemented. However, for those retailers and other market participants who choose to adopt these voluntary guidelines, all of the requirements contained within must be followed. It also is important to note that retailers and other market participants can place country of origin information on labels independent of these voluntary guidelines, provided that current labeling laws are followed.

Defining a Covered Commodity

Covered commodities are muscle cuts of beef, lamb, and pork; ground beef, ground lamb, and ground pork; farm-raised fish; wild fish; perishable agricultural commodities; and peanuts.

Ingredient in a Processed Food Item

The law excludes food items from country of origin labeling when a covered commodity is an "ingredient in a processed food item." However, Public Law 107–171 does not define a "processed food item." Therefore, the Agency must define what constitutes a "processed food item" for each covered commodity in the context of Public Law 107–171 for the purposes of these guidelines.

In developing the definition of "processed food item", the Agency considered using existing definitions of processing. For example, the National Organic Program defines processing as: cooking, baking, curing, heating, drying, mixing, grinding, churning, separating, extracting, slaughtering, cutting, fermenting, distilling, eviscerating, preserving, dehydrating, freezing, chilling, or otherwise manufacturing and includes the packaging, canning, jarring, or otherwise enclosing food in a container. While this definition was useful as a starting point, the Agency believes that such a definition would exempt commodities that Congress clearly intended to be subject to these guidelines. For example, with the coverage of muscle products of beef, lamb, and pork, Congress clearly intended that the slaughtering, cutting, and chilling of these commodities would not exempt them from the guidelines.

The Agency considered defining this exemption to exclude any "ingredient" listed on an ingredient label. Such an interpretation, however, would exclude many products that Congress intended to be covered by this statute. For example, if such an interpretation would be adopted, an item such as bagged lettuce, which lists only lettuce on the ingredients statement, could be excluded. The Agency believes that the mere listing of an otherwise covered commodity in an ingredient statement or list on a packaged covered commodity does not meet the threshold set forth in the law.

To determine when a covered commodity is an ingredient in a processed food item and excluded from these guidelines, the Agency has chosen to define a "processed food item" in two ways. First, a processed food item is defined as a combination of ingredients that result in a product with an identity that is different from that of the covered commodity. Such items include raw salmon when combined with other ingredients to produce sushi and peanuts when combined with other ingredients to produce a candy bar. However, blended and mixed covered commodities, which will be discussed in more detail later in this notice, where the covered commodities retain their identity are still covered by these guidelines. Such items include mixed vegetables such as peas and carrots.

Second, a commodity that is materially changed to the point that its character is substantially different from that of the covered commodity is also deemed to be a processed food item. This includes, but is not limited to, changes that occur as a result of cooking, curing, or restructuring. However, covered commodities that retain their identity when combined with other ingredients, such as water enhanced case ready steaks, are not considered to be "processed food items" under these guidelines. To the extent that this applies to specific covered commodities, further guidance is provided under the particular section for each category of covered commodity.

Whole Muscle Beef, Lamb, and Pork

All raw fresh and frozen whole muscle beef, lamb, and pork products are covered under these guidelines unless they are an ingredient in a processed food item or have been materially changed before retail marketing.

Where there are added ingredients, so long as the character of the whole muscle beef, lamb or pork is retained, the resulting products are covered. This includes such products as needle-tenderized steaks; seasoned, vacuum packaged pork loins; and water enhanced case ready steaks, chops and roasts. These items would be covered because combination of the ingredients and the whole muscle beef, lamb, or pork in does not result in a product with an identity that is different from that of the covered commodity.

In situations where the whole muscle beef, lamb, and pork is an ingredient in a processed food item and the identity of the processed food item is significantly different from that of the covered commodity, the processed food item is excluded from country of origin labeling. For example, items such as ready-to-cook Beef Wellington would be exempt because the combination of ingredients with the covered commodity (muscle cut of beef) creates a product with an identity different from the covered commodity.

When items are materially changed to the point that they do not retain their raw, whole muscle character they would also be excluded from country of origin labeling. This includes such products as restructured steaks and lamb pita meats, which contain pieces of whole muscle beef, pork or lamb that are formed back together. The cooking and curing of products (*e.g.*, the addition of nitrites) also excludes products from labeling. Examples of these products include corned beef briskets and bacon. This is because cooked and cured products, including raw whole muscle cured products, are functionally different products and are not typically marketed with fresh and frozen whole muscle meats at a retail establishment, but instead they are marketed with other excluded meat products.

Ground Beef, Lamb, and Pork

Public Law 107–171 specifically covers "ground beef, ground lamb, and ground pork." The FSIS Food Standards and Labeling Policy Book (1998) defines products labeled as ground meats as not containing added water, cereal, soy derivatives, or other extenders. The Policy Book also specifically defines ground beef as not being able to have any salt, sweetening agents, flavorings, spices, or other seasonings added.

Using the FSIS standards for ground meat and ground beef as a guide, the Agency does not believe that any added ingredient items or further processed products produced from ground beef, ground lamb, or ground pork are covered.

Fresh and Frozen Fruits and Vegetables

The Perishable Agricultural Commodities Act defines perishable agricultural commodities as "any of the following, whether or not frozen or packed in ice: Fresh fruits and vegetables of every kind and character; and * * * includes cherries in brine as defined by the Secretary in accordance with trade usages". Therefore, frozen fruits and vegetables (*e.g.*, a package of frozen strawberries, or frozen French fried potatoes made from sliced potatoes) are covered commodities and fall under these country of origin labeling guidelines.

To maintain consistency with PACA, a frozen fruit or vegetable will be a covered commodity so long as its "kind or character" has not been altered. Therefore, for all perishable agricultural commodities, an "ingredient in a processed food item" is defined to mean an otherwise covered commodity that is a constituent in a food item where the identity of the food item is different from that of the covered commodity (*e.g.*, a frozen prepared pie that includes frozen sliced apples) or is included in a package with significant other foods (*e.g.*, a frozen entree consisting of a pre-cooked meat item and frozen vegetables). Alternatively, when a perishable agricultural commodity is processed (*i.e.*, frozen so as to remain subject to the PACA) and packaged with only preservatives, seasoning, sweeteners or other minor ingredients, the covered commodity would fall under these voluntary country of origin labeling guidelines.

Peanuts

Because the vast majority of peanuts sold at retail are shelled, roasted, and salted, the Agency believes these products were intended to be covered by the law. Accordingly, shelling, roasting, salting, and flavoring of peanuts would not exclude these products from being subject to Public Law 107–171. However, further processed peanut products, including such items as candy coated peanuts, peanut brittle, and peanut butter would not be covered by country of origin labeling guidelines. Similarly, where the peanuts are ingredients in other food products, such as peanuts in a candy bar, they would be excluded.

Wild and Farm-Raised Fish and Shellfish

All fresh and frozen fish and shellfish items are covered by these country of origin labeling guidelines. All cooked and canned fish products, including such items as canned tuna and canned sardines, and restructured fish products, such as fish sticks and surimi, are excluded. Similarly, processed products where the fish or shellfish is an ingredient, such items as sushi, crab salad, and clam chowder, are excluded.

Labeling Country of Origin for Products Produced Exclusively in the United States

If following these guidelines, a retailer shall label a covered commodity as having a "United States Country of Origin" only if the following criteria are met:

1. Beef: Covered commodities must be derived exclusively from animals born, raised, and slaughtered in the United States (including animals that were born and raised in Alaska or Hawaii and transported for a period not to exceed 60 days through Canada to the United States and slaughtered in the United States).

2. Lamb and Pork: Covered commodities must be derived exclusively from animals born, raised, and slaughtered in the United States.

3. Farm-raised Fish and Shellfish: Covered commodities must be derived exclusively from fish or shellfish hatched, harvested, and processed in the United States.

4. Wild Fish and Shellfish: Covered commodities must be derived exclusively from fish or shellfish either harvested in the waters of the United States or by a U.S. flagged vessel and processed in the United States or aboard a U.S. flagged vessel.

5. Fresh and Frozen Fruits and Vegetables, and Peanuts: Covered commodities must be derived exclusively from produce or peanuts grown, packed and, if applicable, processed in the United States.

Product otherwise meeting the requirements of "United States Country of Origin" may retain that designation after export for further processing in a foreign country and reentry into the United States for retail sale so long as a verifiable recordkeeping audit trail is maintained and such labeling is consistent with other Federal labeling requirements.

Labeling Country of Origin for Imported Products (*i.e.*, Produced Entirely Outside of the United States)

Currently, Federal law—the Tariff Act of 1930 as amended (19 U.S.C. 1304), the Federal Meat Inspection Act, the Poultry Products Inspection Act as amended (21 U.S.C. 451 *et seq.*), and other legislation requires most imports, including food items, to bear labels informing the "ultimate purchaser" of their country of origin. Ultimate purchaser has been defined as the last U.S. person who will receive the article in the form in which it was imported. Containers (*e.g.*, cartons and boxes) holding imported fresh fruits and vegetables, for example, must be labeled with country of origin information when entering the United States. (**Note:** The PACA requires all labels on subject commodities to be accurate, but requires no specific labeling information.) Consumer-ready packages, including food products (*e.g.*, a vacuum packaged imported lamb leg, a bundle of asparagus, or a package of frozen strawberries), although they are packed in a box, currently must have country of origin labels on each consumer-ready package. In contrast, a retailer may take loose produce out of a container and display it in an open bin, selling each individual piece of produce that has not been labeled. A placard or other label indicating country of origin is not currently required. If the article is destined for a U.S. processor or manufacturer where it will undergo "substantial transformation," that

processor or manufacturer is considered the ultimate purchaser. As a result, meat and other items have not been required to carry a country of origin mark after cutting or processing in the United States and may presently be labeled product of the United States.

Under these guidelines, the country of origin for products produced entirely outside of the United States shall be the country as specified by the requirements of existing Federal laws at the time the product arrives at the U.S. port of entry. For example, an imported lamb carcass may have actually resulted from an animal slaughtered in the exporting country but born in a country other than the exporting country. However, for the purposes of these labeling guidelines, the imported lamb carcass may be labeled as the product of the exporting country.

Using this country of origin information for imported products, retailers (and their suppliers) will have to maintain the country of origin identity of this class of products to the final point of sale of a covered commodity. So, for the imported lamb carcass example above, under these guidelines if the carcass is fabricated into cuts in the United States, a resulting lamb loin marketed at retail would be marked as product of the exporting nation as it is not eligible for a United States origin claim.

Labeling Country of Origin When the Product Has Entered the United States During the Production Process (*i.e.*, Mixed Origin That Includes the United States)

The law explicitly defines the requirements for covered commodities to be labeled with a "United States Country of Origin." However, the law is considerably less prescriptive for products produced completely or in part outside of the United States. In these cases, the law only requires that retailers inform consumers at the point of sale of a covered commodity of the country of origin.

A number of animals born in foreign countries are raised and slaughtered in the United States. Also, some animals born in the U.S. are raised in foreign countries and then may be slaughtered in either that foreign country or returned to the United States for slaughter. As all three criteria (*i.e.*, born, raised, slaughtered for beef, lamb, and pork) are needed for product to be considered "United States Country of Origin," the Agency has to define how the products from mixed origin animals should most appropriately be labeled. Similarly, the law states that peanuts and perishable agricultural commodities must be "produced" in the United States to be labeled "United States Country of Origin." Since many such products may be grown, packed, or processed in different countries, the Agency must determine how they should be labeled.

The Agency recognizes that the definition provided in the law does not allow products that were produced in both the United States and in a foreign country to be called "United States Country of Origin" or even "Product of the United States and Country X." However, the Agency also recognizes that products such as pork products derived from a pig that was born in a foreign country (*e.g.*, Country X), raised, and slaughtered in the United States cannot be labeled as "Product of Country X" as much of the production of that animal was in the United States. Accordingly, these guidelines provide a system where such products that were produced in both foreign markets and in the United States would be labeled to identify what production processes occurred in a foreign market and what production processes occurred in the United States, up to the point that the country of origin definition was determined. For the pork example above, the product label could either read, "From Country X hogs Raised and Slaughtered in the United States," or alternatively, "Born in Country X, Raised and Slaughtered in the United States." A different example would be vegetables grown in the United States, frozen (processed) in a foreign country, and imported back into the United States for retail sale. This product could be labeled as, "Grown in the United States, Processed in Country X."

The Agency is aware that in some cases, a covered commodity will undergo production processes in two or more foreign countries prior to entering the United States for additional processing or a final process such as slaughter. In these cases, verifiable product information will not always be available for all points in the production process (*i.e.*, born, raised, or grown and packed) prior to the port of entry. In these cases, the product label will designate the country of origin as specified by existing Federal laws (*e.g.*, requirements of the U.S. Customs Service) at the time the product arrives at the U.S. port of entry and any additional major processes (*e.g.*, slaughter for beef or processing for peanuts) performed in the United States be listed on the product label. For example, if a calf was born in Country X and raised in Country Y before being imported for slaughter in the United States, an acceptable product label under these guidelines for the covered commodities derived from this animal would be: "From Cattle Imported from Country Y, Slaughtered in the United States." However, alternatively, if all of the production process information is known for the product that occurred in both Country X and Country Y, it may be included on the product label. So, for the previous example, a label of, "Born in Country X, Raised in Country Y, and Slaughtered in the United States" would be acceptable under these guidelines if a verifiable recordkeeping trail was available, but it would not be required since two or more countries (prior to the product entering the United States) are involved.

The Agency believes this level of detail is required under the statute and will be consistent with the law's purpose of providing meaningful information to consumers. However, the Agency does have concerns that requiring meat products to carry labels that refer to the slaughtering of livestock could be viewed negatively by consumers. As a result, the Agency will allow the term "Processed" to be used in lieu of the term "Slaughtered" on meat products.

Defining Country of Origin for Blended or Mixed Products

The law requires the Agency to formulate guidelines for country of origin labeling for ground beef (and to a lesser extent ground lamb and pork), mixed fruit and vegetables, and blended seafood products that are covered commodities. For the purposes of these labeling provisions, blended or mixed products are those that contain one or more covered commodities from one or more countries. The Agency recognizes that these items are often a mixture of raw materials that are derived from covered commodities produced both in the United States and in countries outside of the United States. Each of the raw material sources for mixed or blended items would have a country of origin as defined by these guidelines.

In addition, the Agency recognizes that it could be misleading to consumers if only a small percentage of a mixture of a covered commodity met the definition of United States origin and yet the mixture could list the United States first ahead of other countries in a country of origin declaration on the package. Therefore, under these guidelines the applicable country of origin labeling for each raw material source (as defined in the guidelines) must be reflected in the labeling of the mixed or blended retail item by order of prominence by weight. This being the case, ground beef would be labeled with

the applicable country of origin information as required by the guidelines for each raw material source in descending order of prominence by weight.

For example, the label "From Country X Cattle Slaughtered in the United States; Product of Country Y; and United States Product" could be the label on a package of ground beef for a mixture of three beef raw material sources where the most substantial raw material source was from cattle born and raised in Country X and slaughtered in the United States, followed by imported Country Y beef trimmings, and then followed by trimmings from beef completely of United States origin. Likewise, the labeling for a bag of shrimp tails containing shrimp that were sourced from multiple countries must, under these guidelines, specify the country of origin of each of the sources of the shrimp in order of their prominence by weight for those shrimp tails in the bag. It is important to note that these guidelines do not require the label to list the actual percentage of weight for each constituent ingredient (*e.g.*, 50 percent United States, 40 percent Country X, 10 percent Country Y).

In the case of mixed or blended products where the individual constituents can be separately identified, the guidelines would require the container to be labeled to individually identify the country of origin of each constituent. An example of a mixed or blended product where the individual constituents can be separately identified is a bagged salad. For a bagged salad that contains lettuce, spinach, and peppers from three different countries, the package label would list the applicable country of origin separately for each constituent ingredient.

Method of Notification

The law states that country of origin notification may be provided to consumers by means of a label, stamp, mark, placard, or other clear and visible sign on the covered commodity or on the package, display, holding unit, or bin containing the commodity at the final point of sale to consumers. However, it is important to note that this requirement does not supercede any existing labeling requirements and any such country of origin notification must not obscure other labeling information required by existing regulatory requirements.

The guidelines allow market participants to utilize a variety of different labeling nomenclatures to denote the country of origin of a covered commodity. For example, "U.K." and "United Kingdom of Great Britain and Northern Ireland" are both allowed under the guidelines. Similarly, covered commodities meeting the guidelines for a "United States Country of Origin" may be labeled by any commonly understood designations such as:

1. Country of Origin—United States;
2. Product of the United States;
3. Produced in the United States; or
4. Product of USA.

The Agency kept this portion of the guidelines non-prescriptive to provide the industry with the most flexibility in implementing the program in the least costly manner possible.

State and Regional Labeling Programs

Under this voluntary program, the law states that retailers notify consumers of the country of origin of covered commodities. The Agency has determined that State and regional labeling programs, such as "Washington Apples," "Idaho Potatoes," and "California Grown" do not meet this requirement. Therefore, such State and regional labeling claims cannot be accepted in lieu of country of origin labeling.

Remotely Purchased Products

For sales of a covered commodity where the customer purchases a covered commodity prior to having an opportunity to observe the final package (*e.g.*, Internet sales, home delivery sales, *etc.*), the retailer, as defined by these guidelines, shall provide the country of origin information on the sales vehicle (*i.e.*, Internet site, home delivery catalog, *etc.*) as part of the information describing the covered commodity being offered for sale. This is because of the Agency's belief that consumers must be made aware of the country of origin of the covered commodity before the purchase is made.

Verification and Enforcement of Country of Origin Labeling Claims Under the Voluntary Program

A distinction was made by Congress when constructing the legislation authorizing this program between the voluntary labeling program and the mandatory labeling program. During the voluntary labeling timeframe covered by these guidelines, the Agency will not perform compliance visits pursuant to Public Law 107–171 and has no authority under the law to pursue enforcement action against entities participating in this voluntary program. However, it is important to note that when retailers and their suppliers choose to adopt the guidelines that all of the provisions contained within must be followed. Any reference by retailers and their suppliers to the use of these guidelines when certain provisions are not being met could be considered a labeling claim that is not truthful and therefore may be a violation of the PACA and other applicable labeling laws and subject to enforcement under these laws.

The law contains several provisions for the verification of country of origin claims. The law states that, "The Secretary may require that any person that * * * distributes a covered commodity for retail sale maintain a verifiable record keeping audit trail * * * to verify compliance * * *" However, the law also sets forth that, "The Secretary shall not use a mandatory identification system to verify the country of origin of a covered commodity." To have a meaningful program, retailers and their down-line suppliers will have to maintain a verifiable audit trail on covered commodities to substantiate country of origin labeling claims. The law states that, "To certify the country of origin of a covered commodity, the Secretary may use as a model certification programs in existence on the date of enactment of this Act." The Agency encourages all retailers who voluntarily choose to adopt these guidelines to contact the Agency to gain a better understanding of the various verification programs operated by the Agency that are already in place in certain market segments that would meet the requirements of this program.

Verification and Enforcement of Country of Origin Labeling Claims Under the Mandatory Program

Enforcement of the country of origin labeling provisions of Public Law 107–171 relative to the frequency and extent of surveillance activities, complaint response, retailer and violation tracking, and public disclosure of information obtained by the Agency are all areas that will be addressed in the mandatory program. Accordingly, the Agency will not perform surveillance activities, investigate complaints, prosecute violations, or otherwise enforce the voluntary guidelines (except as might normally occur under other program authorities). However, as a preparatory measure, retailers and others may request that the Agency perform advisory audits on a user-fee basis to receive feedback on their application of the voluntary system.

Retention of Records

These guidelines require a two-year records retention policy. This timeframe was chosen because it is consistent with

the current records retention requirements of the PACA, which govern these same retailers.

Economic Implications

Though the benefits and costs of the voluntary program are difficult to quantify, the Agency believes that retailers will only choose to participate if the benefits outweigh the costs. As the Agency moves toward the development of a regulation to implement the mandatory program as required by Public Law 107–171, information concerning the benefits and the estimated or actual costs of implementing a program in compliance with the voluntary guidelines will be of great benefit to the Agency. The Agency is aware that studies have been conducted by USDA's Food Safety and Inspection Service (FSIS) and the United States General Accounting Office regarding implications of country of origin labeling and will use this information accordingly.

Labeling of Covered Commodities Marketed to Others Besides Retailers

It is important to note that these guidelines do not apply to covered commodities marketed to others besides retailers, as defined in the law. This includes covered commodities sold to such businesses as food service establishments, butcher shops, and foreign outlets. So, for example, boxed whole muscle beef cuts sold to an importer in Japan would be labeled as they currently are labeled under existing regulations.

Paperwork Reduction Act of 1995

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Agency has requested emergency approval from the Office of Management and Budget for the information collection burden imposed by this program.

The Guidelines

These guidelines include definitions that can be used by retailers and their suppliers and understood by other market participants, to facilitate the labeling or identification of commodities covered by this program by their respective country of origin. These guidelines also outline what the Agency believes represents the framework of a consumer notification, product marking, and recordkeeping program that would be required to carry out this program.

Voluntary Country of Origin Labeling Guidelines

Definitions

Unless otherwise defined, the following terms should be construed as follows:

"Act" means the Agricultural Marketing Act of 1946, (7 U.S.C. 1621 *et seq.*).

"Agency" means the Agricultural Marketing Service, United States Department of Agriculture.

"Beef" means meat produced from cattle, including veal.

"Consumer package" means any container or wrapping in which any covered commodity is enclosed for use in the delivery or display of such commodity to retail purchasers.

"Covered commodity" means fresh or frozen muscle cuts of beef (including veal), lamb, and pork, ground beef, lamb, and pork, as well as farm-raised fish, wild fish, and shellfish (including steaks, nuggets, any other flesh from farmed raised fish and shellfish), perishable agricultural commodities as defined in the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(b)), and peanuts. Covered commodities are excluded from these guidelines if the commodity is an ingredient in a processed food item.

"Department" means the United States Department of Agriculture.

"Farm-raised fish" means net-pen aquaculture or other farm-raised fish or shellfish; and fillets, steaks, nuggets, and any other flesh from a farm-raised fish or shellfish.

"Food service establishment" means a restaurant, cafeteria, lunchroom, food stand, saloon, tavern, bar, lounge, or other similar facility operated as an enterprise engaged in the business of selling food to the public. Food service establishments include salad bars, delicatessens, and other prepared food enterprises that provide ready-to-eat foods that are consumed either on or outside of the retailer's premises.

"Ground beef" means ground beef of skeletal origin produced in conformance with all applicable Food Safety and Inspection Service labeling guidelines. This product contains no added ingredients.

"Ground lamb" means ground lamb of skeletal origin produced in conformance with all applicable Food Safety and Inspection Service labeling guidelines. This product contains no added ingredients.

"Ground pork" means ground pork of skeletal origin produced in conformance with all applicable Food Safety and Inspection Service labeling guidelines. This product contains no added ingredients.

"Ingredient" means the component, either in part or in full, of a finished food product.

"Lamb" means meat, other than mutton, produced from sheep.

"Legibly" means English language text that can be easily read.

"Material change" means altered prior to retail to the extent that the product does not meet the definition of covered commodity. To be considered "materially changed," changes to a commodity must be of such magnitude that its character is substantially different from that of the covered commodity. Specifically, for the following:

1. Whole muscle beef, lamb, and pork: Altered to the point that its character is no longer that of the covered commodity; such as through restructuring, cooking, and curing. Examples include ham, raw corned beef brisket, and restructured beef steaks.

2. Ground beef, lamb, and pork: The addition of any ingredients or cooking. Examples include ground beef with vegetable protein, cooked ground beef crumbles, bratwurst, fresh pork sausage, and lamb sausage.

3. Fresh and frozen fruits and vegetables: Altered to the point that its character is no longer that of the covered commodity. Examples include orange and other fruit juices.

4. Peanuts: Altered to the point that its character is no longer that of the covered commodity. An example is peanut butter.

5. Wild fish and farm-raised fish: Altered to the point that its character is no longer that of the covered commodity. Includes the cooking and canning of fish and shellfish. Examples include canned tuna and canned sardines as well as surimi and restructured fish sticks.

"Perishable agricultural commodity" means fresh and frozen fruits and vegetables of every kind and character where the original character has not been changed (for example, frozen green beans would be included, but frozen concentrated orange juice would be excluded) and includes cherries in brine as defined by the Secretary in accordance with trade usages.

"Person" means any individual, partnership, corporation, association, or other legal entity.

"Pork" means meat produced from hogs.

"Processed food item" means either:

1. A combination of ingredients that may include a covered commodity but the identity of the processed food item

is different from that of the covered commodity; or

2. A covered commodity that has undergone a material change.

"Produced in any country other than the United States" means born, raised, slaughtered, grown, packed, processed, or harvested (as applicable to the covered commodity), outside the fifty U.S states, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, the Trust Territories of the Pacific Islands, and the waters of the United States (as defined in these guidelines), or by a vessel not registered in the United States.

"Raised" means, in the case of beef, lamb, and pork, the period of time following weaning until slaughter.

"Retailer" has the meaning given the term in section 1(b) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(b)), *i.e.*, a person who is a dealer engaged in the business of selling any perishable agricultural commodity solely at retail with an invoice value in any calendar year of more than $230,000.

"Secretary" means the Secretary of Agriculture of the United States or any person to whom the Secretary's authority has been delegated.

"Slaughter" means the point in which a livestock animal (including cattle, swine, and sheep) is prepared into meat products fit for human consumption. For labeling purposes, the term "slaughtered" is interchangeable with the term "processed."

"United States" means the fifty U.S states, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, the Trust Territories of the Pacific Islands, and the waters of the United States (as defined in these guidelines).

United States country of origin" means in the case of:

1. Beef: From animals born, raised, and slaughtered in the United States (including animals born and raised in Alaska and Hawaii and transported for a period not to exceed 60 days through Canada to the United States and slaughtered in the United States).

2. Lamb and pork: From animals born, raised, and slaughtered in the United States.

3. Farm-raised fish: From fish hatched, raised, harvested, and processed in the United States.

4. Wild-fish: From fish either harvested in the waters of the United States or by a U.S. flagged vessel and processed in the United States or aboard a U.S. flagged vessel.

5. Fresh and frozen fruits and vegetables, and peanuts: From products produced in the United States.

"U.S. flagged vessel" means a ship or boat registered in the United States or documented under chapter 121 of title 46, United States Code.

"Vessel flag" means the country of registry for a vessel, ship, or boat.

"Waters of the United States" means those fresh and ocean waters contained within the 200-mile boundary of the Exclusive Economic Zone (EEZ) surrounding the United States.

"Wild fish" means fish and shellfish, regardless of origin, harvested in the wild; and fillets, steaks, nuggets, and any other flesh from a wild fish or shellfish.

Country of Origin Notification

In voluntarily providing notice of the country of origin as covered by this statute, the following guidelines shall be followed:

1. Consumer Notification

A. General

I. All covered commodities offered for sale individually, in bulk bins, cartons, crates, barrels, clusters, or consumer packages shall be legibly marked with the country of origin.

II. Country of origin labeling may be applied prior to or after delivery to the United States.

B. Exemptions

I. Food service establishments are exempted from the country of origin guidelines.

C. Exclusions

I. Covered commodities are excluded from country of origin labeling if they are an ingredient in a processed food item. Examples include:

i. Whole muscle beef, lamb, and pork: Ready-to-cook Beef Wellington.

ii. Ground beef, ground lamb, ground pork: A meal kit that includes ground beef and other ingredients.

iii. Fresh and frozen fruit and vegetables: Frozen prepared pie that includes frozen sliced apples.

iv. Peanuts: Peanuts in a candy bar.

v. Wild and farm-raised fish and shellfish: Salmon sushi.

D. Designation of Wild Fish and Farm-Raised Fish

I. The notice of country of origin for wild fish and farm-raised fish shall specify and distinguish between wild fish and farm-raised fish.

E. Labeling Covered Commodities of United States Country of Origin

I. They must fully meet the definition of United States Country of Origin as put forth in the Definitions section of these guidelines.

II. Products further processed or handled in foreign countries after reaching the threshold point in which the country of origin of the covered commodity is determined may still qualify for "United States Country of Origin" under these guidelines if the product's identity is maintained under a verifiable recordkeeping system. Otherwise, such products shall be labeled with the country from which it was exported in conformance with existing Federal laws. An example is a beef carcass meeting the definition of "Product of United States Origin" exported to another country for cutting into steaks. The resulting steaks from this carcass that are imported back into the United States may either be marked as product of "Country X" or, alternatively, if a verifiable recordkeeping system is in place, "Product of United States Origin."

F. Labeling Imported Products

I. Shall be labeled with the country from which it was exported in conformance with existing Federal laws.

II. For covered commodities that undergo different phases of preparation, production or processing in various countries prior to export to the United States, the label may also include additional country of origin information if the product's identity is maintained under a verifiable recordkeeping system. This includes referencing production processes which may have occurred in the United States prior to export to a foreign country and ultimate import back into the United States.

G. Labeling Covered Commodities From Multiple Countries That Include the United States

I. Beef, Lamb, Pork:

i. If an animal was born or raised in a foreign country prior to slaughter in the United States, the resulting meat products shall be labeled to show the processing steps that occurred in a foreign country prior to slaughter in the United States consistent with existing Federal law at the time the animal entered the United States. For example, if a calf is born and raised in a foreign country, and then exported for further raising and slaughtering in the United States, the label could either read, "From Country X" cattle Raised and Slaughtered in the United States," or, alternatively, "Born and Raised in Country X and Raised and Slaughtered in the United States."

ii. If the animal was born or raised in two or more foreign countries prior to slaughter in the United States, the resulting meat products shall be labeled as originating from animals from the

country as determined under existing Federal law at the time they entered the United States and for the process(es) occurring in the United States. For example, a steer born in Country X, exported to Country Y for raising, and then exported to the United States for slaughter could have the label, "From Country Y cattle Slaughtered in the United States." However, such products may instead be labeled to identify each specific country (*e.g.*, "Born in Country X, Raised in Country Y, and Slaughtered in the United States") if the animal's identity was maintained under a verifiable recordkeeping system.

II. Fresh and Frozen Fruits and Vegetables, and Peanuts

i. In the case where a covered commodity was grown and packed in a foreign country prior to processing in the United States, the product shall be labeled with the foreign country where it was grown and/or packed in accordance with existing Federal law at the time when the product entered the United States. For example, the product label could be applied as: "Grown and packed in Country X and Processed in the United States."

ii. In the case where a covered commodity was grown and packed in two or more foreign countries prior to processing in the United States, the product shall be labeled with the foreign country it was grown and/or packed in accordance with existing Federal law at the time when the product entered the United States. For example, product may have been grown in Country X, packed in Country Y, and processed in the United States. When the product entered the United States, under existing Federal law it would be identified as product of Country Y and could carry the label "Product of Country Y, Processed in the United States." However, such products may instead be labeled to identify each specific country and in applicable chronological order by country if the product's identity was maintained under a verifiable recordkeeping system.

III. Wild Fish and Farm-raised Fish: In the case where a covered commodity was harvested in the waters of or by a flagged vessel of one country and processed in another country or onboard a vessel with a different flag, the product label shall be applied as: "Harvested in (Country X, as applicable) and Processed in (Country Y, as applicable)."

H. Blended Products

I. For commingled, blended, or mixed covered commodities offered for retail sale that are prepared from raw materials originating from different countries (*e.g.*, ground beef, salads, or fresh or frozen mixed fruits or vegetables) the label shall indicate the country of origin information of each constituent or component covered commodity raw material source in accordance with these guidelines by order of prominence by weight.

II. The product label shall be applied as: "Produced from covered commodities with the following countries of origin: (Raw material source A, with born, raised, slaughtered, grown, packed, harvested, or processed information as applicable to the commodity as defined by these guidelines), (Raw material source B, with born, raised, slaughtered, grown, packed, harvested, or processed as applicable to the commodity as defined by these guidelines)," and so forth until all covered commodity raw material sources are accounted for by order of prominence by weight.

III. Products made from commingled, blended, or mixed covered commodities where processing has altered the commodity's character (*e.g.*, cooked vegetables in a soup), do not have to be labeled as to the country of origin of the constituent items.

I. Remotely Purchased Products

I. For sales of a covered commodity where the customer purchases a covered commodity prior to having an opportunity to observe the final package (*e.g.*, Internet sales, home delivery sales, *etc.*), the retailer, as defined by these guidelines, shall provide the country of origin information on the sales vehicle (*i.e.*, Internet site, home delivery catalog, *etc.*) as part of the information describing the covered commodity being offered for sale.

2. Markings

A. Country of origin notification markings can either be in the form of a placard, sign, label, sticker, or other format that allows consumers to identify the country of origin of particular covered items. The placard, sign, label, sticker or other display must be placed in a conspicuous location. Country of origin information may be typed, printed, or handwritten. Labels must be written in English; additional accompanying languages are permissible. Country of origin notification shall be written in a form that allows the consumer to read them when selecting items to be purchased.

B. Abbreviations and variant spellings, which unmistakably indicate the country such as: "U.K." for "The United Kingdom of Great Britain and Northern Ireland" and "Brasil" for "Brazil" are acceptable. The adjectival form of the name of a country or region/city within a country may not be used as proper indication of the country of origin of imported commodities. For example, product names such as "Spanish peanuts" which are most commonly used to designate a product variety and not the actual origin of the product, would, without a further designation of country of origin, be unacceptable even if the products did actually originate from that country. Symbols (flags, national symbols, *etc.*) may not be used to denote a country of origin, but may be used in conjunction with an acceptable country of origin label.

C. State or regional labeling programs will not be accepted in lieu of country of origin labeling.

D. The phrases "Product of Country X," and/or "Grown in Country X," and/or "Imported from Country X," can be used to denote the country of origin for products produced entirely in any country other than the United States.

3. Recordkeeping

A. Every person that prepares, stores, handles, or distributes a covered commodity for retail sale must keep records on the country of origin for a period of at least two years.

B. Any person engaged in the business of supplying a covered commodity to a retailer must make available information to the retailer indicating the country of origin of the covered commodity. Such persons, which include but are not limited to, producers, growers, handlers, packers, processors, and importers, must maintain auditable records documenting the origin of covered commodities. Self-certification by such persons is not sufficient.

C. Retailers must ensure that a verifiable audit trail is maintained through contracts or other means, recognizing that suppliers throughout the production/marketing chain have a responsibility to maintain the necessary supporting records.

D. All records must be legible and written in English, and may be maintained in either electronic or hard copy formats. To ensure accurate labeling and provide an auditable document trail, retailers must have records at the place of final sale that identify the country of origin of all covered commodities sold at that facility. In addition, records of any person who prepares, stores, handles, or distributes a covered commodity and/or comprehensive records maintained by the retailer may be located at points of distribution and sale, warehouses, or at central offices. Wherever maintained

and in whatever format, these records must be readily accessible to review by the retailer and the Department.

E. Records for domestically produced and/or processed products must clearly identify the location of the growers and production facilities. When similar covered commodities may be present from more than one country or different production regimes, a verifiable segregation plan must be in place. For imported commodities, records must provide clear product tracking from the port of entry into the United States.

F. Recognizing retailers and their suppliers may have different accounting and inventory documentary systems; various forms of documentation will be acceptable provided the necessary tracking information is available.

4. Enforcement

A. The Secretary will not perform surveillance of retailers, investigate complaints, prosecute violations, or otherwise enforce the provisions of the voluntary guidelines.

B. The voluntary guidelines will not interfere with or supercede any other statutory requirement for country of origin labeling for the covered commodities. (*i.e.*, all other Federal and/or state labeling requirements remain in force).

C. As a preparatory measure, retailers and any other person that prepares, stores, handles, or distributes a covered commodity for retail sale may request that the Agency perform advisory audits on a user-fee basis to receive feedback on their application of the voluntary system.

Authority: 7 U.S.C. 1621 *et seq.*

A.J. Yates,

Administrator.

[FR Doc. 02–25734 Filed 10–8–02; 3:00 pm]

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DEPARTMENT OF AGRICULTURE

Farm Service Agency

Advisory Committee on Beginning Farmers and Ranchers

AGENCY: Farm Service Agency, USDA.

ACTION: Notice requesting nominations.

SUMMARY: The Secretary of Agriculture intends to renew the charter of the Advisory Committee on Beginning Farmers and Ranchers (Committee). The Committee provides advice to the Secretary on ways to encourage Federal and State beginning farmer programs to provide joint financing to beginning farmers and ranchers, and other methods of creating new farming and ranching opportunities. Nominations of persons to serve on the Committee are invited.

DATES: Nominations will be accepted through November 12, 2002, and should be submitted to Mark Falcone, Designated Federal Official (DFO) for the Committee, at the address below.

ADDRESSES: Mark Falcone, DFO for the Advisory Committee on Beginning Farmers and Ranchers, Farm Service Agency, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 0522, Washington, DC 20250–0522; telephone (202) 720–1632; FAX (202) 690–1117; *e-mail mark_falcone@wdc.fsa.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Mark Falcone at (202) 720–1632.

SUPPLEMENTARY INFORMATION: Section 5 of the Agricultural Credit Improvement Act of 1992 (Pub. L. 102–554) required the Secretary of Agriculture to establish the Committee for the purpose of advising the Secretary on the following: (1) The development of a program of coordinated financial assistance to qualified beginning farmers and ranchers under section 309(l) of the Consolidated Farm and Rural Development Act (Federal and State beginning farmer programs provide joint financing to beginning farmers and ranchers); (2) methods of maximizing the number of new farming and ranching opportunities created through the program; (3) methods of encouraging States to participate in the program; (4) the administration of the program; and (5) other methods of creating new farming or ranching opportunities.

The law requires that members include representatives from the following groups: (1) The Farm Service Agency (FSA); (2) State beginning farmer programs (as defined in section 309(i)(5) of the Consolidated Farm and Rural Development Act); (3) commercial lenders; (4) private nonprofit organizations with active beginning farmer or rancher programs; (5) the Cooperative State Research, Education, and Extension Service; (6) Community colleges or other educational institutions with demonstrated experience in training beginning farmers or ranchers; and (7) other entities or persons providing lending or technical assistance to qualified beginning farmers or ranchers. The Secretary has also appointed farmers and ranchers to the Committee.

Departmental Regulation 1042–119 dated November 25, 1998, formally established the Committee and designated FSA to provide support. One-third of the Committee membership was replaced when the Committee charter was reestablished on January 15, 2001. Approximately one-third of the 19 existing members will be replaced when the charter is renewed in January 2003. FSA is now accepting nominations of individuals to serve for a 2-year term on the Committee. Reappointments are made to assure effectiveness and continuity of operations. The duration of the Committee is indefinite. No member, other than a USDA employee, can serve for more than 6 consecutive years.

Nominations are being sought through the media, the **Federal Register**, and other appropriate methods. Persons nominated for the Committee will be required to complete and submit an Advisory Committee Membership Background Information Questionnaire (Form AD 755). The questionnaire is available on the Internet at http://www.fsa.usda.gov/dafl/Downloads/ad755.pdf. Questionnaires can be completed on-line. However, nominees must print their completed forms from an Adobe PDF file and mail or fax them to the above address or fax number. The form may also be requested by telephone, fax, or e-mail. All inquiries about the nomination process and submissions of the AD 755 should be made to Mark Falcone at the addresses and numbers listed above.

Appointments to the Committee will be made by the Secretary of Agriculture. Equal opportunity practices, in line with USDA policies, will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by the Department, membership should include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, persons with disabilities, and senior citizens.

The Committee meets at least once a year and all meetings are open to the public. Committee meetings provide an opportunity for members to exchange ideas and provide advice on ways to increase opportunities for beginning farmers and ranchers. Members discuss various issues and draft recommendations, which are submitted to the Secretary in writing.

Signed in Washington, DC, on October 4, 2002.

Teresa C. Lasseter,

Administrator, Farm Service Agency.

[FR Doc. 02–25923 Filed 10–10–02; 8:45 am]

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Notices

Federal Register

Vol. 67, No. 225

Thursday, November 21, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. LS–02–16]

Notice of Request for Emergency Approval of a New Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), this notice announces that the Agricultural Marketing Service is requesting emergency approval from the Office of Management and Budget for the new information collection, "Interim Voluntary Country of Origin Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts Under the Agricultural Marketing Act of 1946."

DATES: Comments must be received by January 21, 2003, to be considered.

ADDRESSES: Send written comments to: (1) Country of Origin Labeling Program, Agricultural Marketing Service, USDA STOP 0249, Room 2092–S, 1400 Independence Avenue, SW., Washington, DC 20250–0249, or fax to (202) 720–3499 or send by E-mail to *cool@usda.gov;* (2) Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Room 725, Washington, DC 20503, Attention: Desk Officer; and to (3) Clearance Officer, USDA–OCIO, Room 404–W, Jamie L. Whitten Building, STOP 7602, 1400 Independence Avenue, SW., Washington, DC 20250–7602.

All comments will become a matter of public record. Comments will be available for public inspection from the Agricultural Marketing Service (AMS) at the above address and over the Agency's Web site at: *http://www.ams.usda.gov/cool/.*

FOR FURTHER INFORMATION CONTACT: Eric Forman, Associate Deputy Administrator, Fruit and Vegetable Programs, AMS, USDA, at: *eric.forman@usda.gov,* or William Sessions, Associate Deputy Administrator, Livestock and Seed Program, AMS, USDA, at: *william.sessions@usda.gov.*

SUPPLEMENTARY INFORMATION: Title: Interim Voluntary Country of Origin Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts Under the Authority of the Agricultural Marketing Act of 1946.

OMB Number: 0581–XXXX.

Type of Request: New Collection.

Abstract: Section 10816 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) amended the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*) to require the Department of Agriculture (USDA) to issue country of origin labeling guidelines for use by retailers who wish to notify their customers voluntarily of the country of origin of beef (including veal), lamb, pork, fish, perishable agricultural commodities, and peanuts. These guidelines for the interim voluntary country of origin labeling of beef, lamb, pork, fish, perishable agricultural commodities, and peanuts were published in the September 11, 2002, **Federal Register** (67 FR 63367). Public Law 107–171 also requires the Secretary to promulgate requirements for mandatory labeling by September 30, 2004. It is the intent of the Agency that these guidelines, and experience gained through their voluntary adoption by the industry, will serve as the basis of the requirements that will be developed to implement the mandatory labeling program.

The voluntary guidelines prescribe minimum requirements for a recordkeeping system and refer to the enforcement provisions that will be a part of the mandatory program. Recordkeeping is essential to the integrity of any country of origin labeling program, whether it be a voluntary program or a mandatory program. Recordkeeping creates a paper trail that is a critical element in carrying out any internal reviews of a system conducted by industry representatives under a voluntary program or in enforcement audits that will be necessary for the Agency to conduct under the mandatory program. Additionally, the establishment of minimum recordkeeping requirements for the voluntary program serves the industry by providing a basis for the evaluation of compliance with the guidelines, for administering the program, for management decisions and planning, and for establishing the cost of the program. In addition, under the mandatory program, it supports administrative and regulatory actions the Agency may have to take in response to findings of noncompliance.

In general, under the voluntary program, the information collected will be used by industry personnel. It will be created, maintained, and/or submitted by producers, importers, handlers, and retailers. Additionally, it will necessitate that all of these entities have recordkeeping procedures in place.

The burden on each industry sector is discussed below. One major estimate made about each entity is the number of entities likely to participate in this voluntary program. Because the Agency has no basis to determine the level of participation in this program, it has estimated that all industry members that could be affected by the mandatory program will participate in the voluntary program. In estimating the burden hours associated with the recordkeeping requirements imposed on each industry sector, AMS drew upon its experience with the oversight of auditable and verifiable origin-based documented marketing programs already administered by the Agency.

Producers (commercial farms, ranches, and fishermen). USDA estimates that there are approximately 2 million commercial farms, ranches, and fishermen in the United States. Although a number of these farms, ranches, and fishermen may not produce products that are covered by these guidelines, or sell to outlets that would require their suppliers to adopt these guidelines, this analysis assumes that all of these farms, ranches, and fishermen will implement a system for the voluntary labeling of the country of origin for the products these farms, ranches, and fishermen produce. AMS estimates that the time required for a producer to develop a recordkeeping system that would meet the requirements of these guidelines to be 1 day. AMS estimates that the ongoing

time required generating and maintaining the required records to be approximately 1 hour per month. Although AMS recognizes that many large-scale producers, such as large cattle feedlots, will require substantial more time than these estimates, AMS believes that the overall averages presented here to be accurate. For the purposes of this program, AMS also estimates the hourly rate, or value of time for a producer to be $25 per hour.

Accordingly, AMS estimates that the total burden for producers to develop a recordkeeping system that would comply with these guidelines to be 2 million producers × $25 per hour × 8 hours, or $400 million. In addition, AMS estimates that the total annual burden for producers to generate and maintain the records required to comply with these voluntary guidelines to be 2 million producers × $25 per hour × 12 hours, or $600 million. Therefore, the total potential burden of this program on producers in the first year could be $400 million + $600 million, or $1 billion.

Food Handlers (including packers, processors, importers, wholesalers, and distributors): AMS estimates that there are 100,000 food handlers. Although a number of these food handlers may not process or handle products that are covered by these guidelines or sell to outlets that would require their suppliers to adopt these guidelines, this analysis assumes that all of these food handlers will implement a system for the voluntary labeling of the country of origin for the products they process or handle. AMS estimates that the time required for a food handler to develop a recordkeeping system that would meet the requirements of these guidelines to be 2 days. AMS estimates that the ongoing time required generating and maintaining the required records to be approximately 1 hour per week. Although AMS recognizes that many large facilities, such as large-scale meatpackers, will require substantially more time than these estimates, AMS believes that the overall averages presented here to be accurate. For the purposes of this program, AMS also estimates the hourly rate, or value of time for a food handler to be $50 per hour.

Accordingly, AMS estimates that the total burden for food handlers to develop a recordkeeping system that would comply with these guidelines to be 100,000 food handlers x $50 per hour x 16 hours, or $80 million. In addition, AMS estimates that the total annual burden for food handlers to generate and maintain the records required to comply with these voluntary guidelines to be 100,000 food handlers x $50 per hour x 52 hours, or $260 million. Therefore, the total potential burden of this program on food handlers in the first year could be $80 million + $260 million, or $340 million.

Retailers: There are currently approximately 31,000 Perishable Agricultural Commodities Act licensee outlets that would be considered retailers and covered by these voluntary guidelines. Although a number of these retailers may choose not to adopt these guidelines, this analysis assumes that all of these retailers will implement a system for the voluntary labeling of the country of origin for the products they sell. AMS estimates that the time required for a retailer to develop a recordkeeping system that would meet the requirements of these guidelines to be 5 days. AMS estimates that the ongoing time required generating and maintaining the required records to be approximately 1 hour per day. Although AMS recognizes that many large retailers, such as supermarkets, will require substantially more time than these estimates, AMS believes that the overall averages presented here to be accurate. For the purposes of this program, AMS also estimates the hourly rate, or value of time for the employee of a retailer to be $50 per hour and that a retailer will work 7 days a week.

Accordingly, AMS estimates that the total burden for retailers to develop a recordkeeping system that would comply with these guidelines to be 31,000 retailers x $50 per hour x 40 hours, or $62 million. In addition, AMS estimates that the total annual burden for retailers to generate and maintain the records required to comply with these voluntary guidelines to be 31,000 retailers x $50 per hour x 365 hours, or $565.75 million. Therefore, the total potential burden of this program on retailers in the first year could be $62 million + $565.75 million, or $627.75 million.

Annual Reporting and Recordkeeping Burden for the First Year:

Estimated Number of Respondents: 2,131,000.

Total Annual Hours: 59,355,000.

Total Cost: $1,967,750,000.

Comments. Comments are requested on these recordkeeping requirements. Comments are specifically invited on: (1) Whether the recordkeeping is necessary for the proper operation of this voluntary program, including whether the information would have practical utility; (2) the accuracy of USDA's estimate of the burden of the recordkeeping requirements, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the records to be maintained; and (4) ways to minimize the burden of the recordkeeping on those who are to maintain and/or make the records available, including the use of appropriate automated, electronic, mechanical, or other technological recordkeeping techniques or other forms of information technology.

Dated: November 14, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–29602 Filed 11–20–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. # TM–02–09]

Notice of Program Continuation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice Inviting Proposals for fiscal year (FY) 2003 grant funds under the Federal-State Marketing Improvement Program.

SUMMARY: Notice is hereby given that for the Federal-State Marketing Improvement Program (FSMIP) for FY 2003 the Continuing Budget Resolution as well as U.S. House of Representatives and U.S. Senate Appropriations Bills provide $1,347,000, the same amount as for FY 2002. States interested in obtaining funds under the program are invited to submit proposals. While only State Departments of Agriculture or other appropriate State Agencies are eligible to apply for funds, State Agencies are encouraged to involve industry groups and community-based organizations in the development of proposals and the conduct of projects.

DATES: Funds will be allocated on the basis of one round of consideration. Proposals will be accepted through February 14, 2003.

ADDRESSES: Proposals may be sent to: FSMIP Staff, Transportation and Marketing Programs, Agricultural Marketing Service (AMS), U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 4009 South Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Janise Zygmont, FSMIP Staff Officer, (202) 720–2704.

SUPPLEMENTARY INFORMATION: FSMIP is authorized under Section 204(b) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*). FSMIP provides matching grants on a competitive basis

Notices

Federal Register
Vol. 68, No. 14
Wednesday, January 22, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Renewal of the Advisory Committee on Voluntary Foreign Aid

AGENCY: United States Agency for International Development.

ACTION: Notice of renewal of advisory committee.

SUMMARY: Pursuant to the Federal Advisory Committee Act, the Administrator has determined that renewal of the Advisory Committee on Voluntary Foreign Aid for a two-year period, beginning January 22, 2003, is necessary and in the public interest.

FOR FURTHER INFORMATION CONTACT: Noreen O'Meara, (202) 712–5979

Dated: January 16, 2003.

Noreen O'Meara,

Director, Advisory Committee on Voluntary Foreign Aid (ACVFA).

[FR Doc. 03–1358 Filed 1–21–03; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Motor Vehicles; Alternative Fuel Vehicle (AFV) Report

AGENCY: Departmental Administration, USDA.

ACTION: Notice of Availability—Fleet (AFV) Report.

SUMMARY: In accordance with the Energy Policy Act of 1992 (EPAct) (42 U.S.C. 13211–13219) as amended by the Energy Conservation Reauthorization Act of 1998 (Pub. L. 105–388), and Executive Order (EO) 13149, "Greening the Government Through Federal Fleet and Transportation Efficiency," the Department of Agriculture's annual alternative fuel reports are available on the following Department of Agriculture Web site; *http://www.usda.gov/energyandenvironment/alternative.html*

FOR FURTHER INFORMATION CONTACT: James Michael, Jr., (202) 720–8616.

Dated: January 8, 2003.

Lou Gallegos,

Assistant Secretary, Departmental Administration.

[FR Doc. 03–1342 Filed 1–21–03; 8:45 am]

BILLING CODE 3410–98–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[No. LS–03–02]

Notice of Request for Emergency Approval of a New Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments; extension of comment period.

SUMMARY: On November 21, 2002, the Agricultural Marketing Service (AMS) published a "Notice of Request for Emergency Approval of a New Information Collection" in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). This notice announced that AMS was requesting emergency approval from the Office of Management and Budget (OMB) for the new information collection, "Interim Voluntary Country of Origin Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts Under the Agricultural Marketing Act of 1946." AMS is extending the comment period to February 21, 2003, because several industry trade organizations requested additional time to file comments. A closing date is necessary for burden comments in order to receive OMB emergency approval.

DATES: Comments must be received by February 21, 2003.

ADDRESSES: Send written comments to: (1) Country of Origin Labeling Program, Agricultural Marketing Service, USDA, STOP 0249, Room 2092–S, 1400 Independence Avenue, SW., Washington, DC 20250–0249, or fax to (202) 720–3499, or send by e-mail to *cool@usda.gov;* (2) Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Room 725, Washington, DC 20503, Attention: Desk Officer; and to (3) Clearance Officer, USDA–OCIO, Room 404–W, Jamie L. Whitten Building, STOP 7602, 1400 Independence Avenue, SW., Washington, DC 20250–7602.

All comments will become a matter of public record. Comments will be available for public inspection from the Agricultural Marketing Service (AMS) at the above address and over the Agency's Web site at: *http://www.ams.usda.gov/cool/.*

FOR FURTHER INFORMATION CONTACT: Eric Forman, Associate Deputy Administrator, Fruit and Vegetable Programs, AMS, USDA, by phone on: (202) 690–0262, or via e-mail at: *eric.forman@usda.gov;* or William Sessions, Associate Deputy Administrator, Livestock and Seed Program, AMS, USDA, by phone on: (202) 720–5705, or via e-mail at: *william.sessions@usda.gov.* Additional information may also be obtained over the Agency's Web site at: *http://www.ams.usda.gov/cool/.*

SUPPLEMENTARY INFORMATION: On November 21, 2002, the Agricultural Marketing Service published a notice and request for comments in the **Federal Register** (67 FR 70205), entitled, "Notice of Request for Emergency Approval of a New Information Collection," in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). This notice outlined the Agency's estimates of the burden on respondents relating to the notice published in the **Federal Register** (67 FR 63367) on October 11, 2002, entitled, "Establishment of Guidelines for the Interim Voluntary Country of Origin Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts under the Agricultural Marketing Act of 1946" (7 U.S.C. 1621 *et seq.*). Submissions concerning any information related to the implementation of these "Voluntary Guidelines" may still be submitted through April 9, 2003.

The comment period for the "Notice of Request for Emergency Approval of a New Information Collection" was originally scheduled to end on January 21, 2003. However, several industry trade organizations requested additional time to study the notice to develop more meaningful comments. Although a closing date for burden comments is needed to receive emergency OMB approval of the new collection, AMS has determined that there is sufficient

justification for extending the comment period 30 days until February 21, 2003.

Dated: January 16, 2003.

A.J. Yates,

Administrator.

[FR Doc. 03–1432 Filed 1–17–03; 2:27 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[No. LS–02–19]

Beef Promotion and Research: Certification and Nomination for the Cattlemen's Beef Promotion and Research Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of Agriculture's (USDA) Agricultural Marketing Service (AMS) is accepting applications from State cattle producer organizations or associations and general farm organizations, as well as cattle or beef importer organizations, who desire to be certified to nominate producers or importers for appointment to vacant positions on the Cattlemen's Beef Promotion and Research Board (Board). Organizations which have not previously been certified that are interested in submitting nominations must complete and submit an official application form to AMS. Previously certified organizations do not need to reapply. Notice is also given that vacancies will occur on the Board and that during a period to be established, nominations will be accepted from eligible organizations and individual importers.

DATES: Applications for certification must be received by close of business February 21, 2003.

ADDRESSES: Certification form as well as copies of the certification and nomination procedures may be requested from Kenneth R. Payne, Chief; Marketing Programs Branch, LS, AMS, USDA; STOP 0251–Room 2638-S; 1400 Independence Avenue, SW.; Washington, DC 20250–0251. The form may also be found on the Internet at *http://www.ams.usda.gov/lsg/mpb/beef/ls25.pdf.*

FOR FURTHER INFORMATION CONTACT: Kenneth R. Payne, Chief, Marketing Programs Branch on 202/720–1115.

SUPPLEMENTARY INFORMATION: The Beef Promotion and Research Act of 1985 (Act) (7 U.S.C. 2901 *et seq.*), enacted December 23, 1985, authorizes the implementation of a Beef Promotion and Research Order (Order). The Order, as published in the July 18, 1986, **Federal Register** (51 FR 26132), provides for the establishment of a Board. The current Board consists of 100 cattle producers and 8 importers appointed by USDA. The duties and responsibilities of the Board are specified in the Order.

The Act and the Order provide that USDA shall either certify or otherwise determine the eligibility of State cattle producer organizations or associations and general farm organizations, as well as any importer organizations or associations to nominate members to the Board to ensure that nominees represent the interests of cattle producers and importers. Nominations for importer representatives may also be made by individuals who import cattle, beef, or beef products. Persons who are individual importers do not need to be certified as eligible to submit nominations. When individual importers submit nominations, they must establish to the satisfaction of USDA that they are in fact importers of cattle, beef, or beef products, pursuant to § 1260.143(b)(2) of the Order [7 CFR 1260.143(b)(2)]. Individual importers are encouraged to contact AMS at the above address to obtain further information concerning the nomination process, including the beginning and ending dates of the established nomination period and required nomination forms and background information sheets. Certification and nomination procedures were promulgated in the final rule, published in the April 4, 1986, **Federal Register** (51 FR 11557) and currently appear at 7 CFR § 1260.500 through § 1260.640. Organizations which have previously been certified to nominate members to the Board do not need to reapply for certification to nominate producers and importers for the upcoming vacancies.

The Act and the Order provide that the members of the Board shall serve for terms of 3 years. The Order also requires USDA to announce when a Board vacancy does or will exist. The following States have one or more members whose terms will expire in early 2004:

State or unit	Number of Vacancies
Arizona	1
California	2
Colorado	1
Iowa	2
Kansas	2
Louisiana	1
Michigan	1
Minnesota	1
Mississippi	1
Missouri	1
Nebraska	2
Nevada	1
New Mexico	1
North Carolina	1
Oklahoma	1
South Dakota	2
Tennessee	1
Texas	4
Utah	1
Wisconsin	2
Wyoming	1
Importer Unit	2
Mid-Atlantic Unit	1
Northeast Unit	1
Southeast Unit	1

Since there are no anticipated vacancies on the Board for the remaining States' positions, or for the positions of the Northwest unit, nominations will not be solicited from certified organizations or associations in those States or units.

Uncertified eligible producer organizations and general farm organizations in all States that are interested in being certified as eligible to nominate cattle producers for appointment to the listed producer positions, must complete and submit an official "Application for Certification of Organization or Association," which must be received by close of business February 21, 2003. Uncertified eligible importer organizations that are interested in being certified as eligible to nominate importers for appointment to the listed importer positions must apply by the same date. Importers should not use the application form but should provide the requested information by letter as provided for in 7 CFR § 1260.540(b). Applications from States or units without vacant positions on the Board and other applications not received within the 30-day period after publication of this Notice in the **Federal Register** will be considered for eligibility to nominate producers or importers for subsequent vacancies on the Board.

Only those organizations or associations which meet the criteria for certification of eligibility promulgated at 7 CFR § 1260.530 are eligible for certification. Those criteria are:

(a) For State organizations or associations:

(1) Total paid membership must be comprised of at least a majority of cattle producers or represent at least a majority of cattle producers in a State or unit,

(2) Membership must represent a substantial number of producers who produce a substantial number of cattle in such State or unit,

STATEMENT OF MR. WILLIAM T. HAWKS,
UNDER SECRETARY FOR MARKETING AND REGULATORY PROGRAMS,
U.S. DEPARTMENT OF AGRICULTURE
BEFORE THE
SENATE AGRICULTURE COMMITTEE
SUBCOMMITTEE ON MARKETING, INSPECTION AND PROMOTION

APRIL 22, 2003

Introduction

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to appear before you today to discuss the mandatory country of origin labeling provision for livestock and, more specifically, what USDA is doing to implement this Farm Bill mandate. I am Bill Hawks, Under Secretary for Marketing and Regulatory Programs at the U.S. Department of Agriculture, and I am pleased to be here today in your home State of Missouri.

Country of Origin Labeling Voluntary Guidelines

Section 10816 of the 2002 Farm Bill requires the Secretary of Agriculture to implement a mandatory country of origin labeling program at the final point of retail sale for beef, lamb, pork, fish, shellfish, perishable agricultural commodities, and peanuts after a two-year voluntary program. Congress provided clarification for dealing with wild fish in the Fiscal Year 2002 Supplemental Appropriations Act, signed into law on August 2, 2002.

Mr. Chairman, as you may know, the Office of Management and Budget's Statement of Administration Policy on S.1731, the *Agriculture, Conservation, and Rural Enhancement Act of 2001*, found the provision requiring mandatory country of origin labeling highly objectionable. The Administration's position and the reasons for that position have not changed. We feel these new requirements will not have a positive effect overall and that the potential impact on trade and the unintended consequences on producers could be significant.

In spite of the Administration's view and the narrow parameters Congress adopted for this very prescriptive piece of legislation, USDA is fully committed to carry out the intent of this law to

the best of its abilities. These provisions are part of the Farm Bill and we are working diligently to implement them.

This program began on October 11, 2002, when USDA published its "Guidelines for the Voluntary Country of Origin Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts" in the Federal Register. The voluntary guidelines, effective upon publication, are to be used by retailers who wish to notify their customers of the country of origin of the covered commodities they purchase prior to the mandatory implementation date of September 30, 2004.

The voluntary guidelines are the result of consulting with scores of interested parties, including the public, industry groups, consumer groups, trade associations, foreign governments, and Congress. In fact, USDA met with over 40 different groups and associations in formulating the voluntary guidelines. USDA received approximately 1,000 comments by the April 9, 2003, closing date and we are now in the process of analyzing all the comments received as we begin development of mandatory country of origin labeling requirements.

The law requires retailers to label, at the final point of sale, beef, lamb, and pork – both muscle cuts and ground – fish, shellfish, perishable agricultural commodities, and peanuts as to their country of origin and further label fish as either wild or farm-raised. The law defines retailer as does the Perishable Agricultural Commodities Act, as a business that sells fresh or frozen fruit and vegetables with an annual invoice value of more than $230,000. Approximately 4,200 PACA retail licensees operating some 31,000 retail outlets are within this definition. By using this definition, Congress exempts butcher shops, fish markets, and small retailers, in addition to the restaurants and other food service establishments the bill specifically exempts from the labeling requirements.

The Farm Bill defines the criteria for a covered commodity to be labeled as "U.S. Country of Origin." To receive this label, the beef, lamb, and pork must be derived exclusively from animals born, raised, and slaughtered in the United States. There is an exception for beef from cattle born and raised in Alaska or Hawaii and transported through Canada for not longer than 60

days before slaughter in the United States. Wild fish and shellfish must be derived exclusively from fish or shellfish harvested in U.S. water or aboard a U.S. flagged vessel and processed in the United States or aboard a U.S. flagged vessel. Farm-raised fish and shellfish must be derived exclusively from fish or shellfish hatched, raised, harvested, and processed in the United States. Fresh and frozen fruit and vegetables, as well as peanuts, must be exclusively produced in the United States.

The Act says "covered commodities" must be labeled unless they are an "ingredient in a processed food item." USDA determined that there are some covered commodities that, while they undergo slight processing, still retain the original identity of the commodity. Examples of some of these processed "covered commodities" include solution-enhanced and seasoned pork loins, frozen peas and carrots, frozen ground beef patties, and bagged salads. In the voluntary guidelines, therefore, a "processed food item" was defined as a materially changed covered commodity or an item that has a combination of ingredients that include the covered commodity but the identity of the food item is different from that of the covered commodity. Examples of such items would include ready-to-cook Beef Wellington, ground beef in a meal mix, fish in sushi, apple slices in a pie, or peanuts in a candy bar. Other processed food items include cooked, cured or smoked meats and fish, and fruit juice.

Although the COOL provision of the Farm Bill requires that all covered commodities be labeled at retail as to their country of origin and provides a very specific definition for "U.S. Country of Origin," it does not specify how to label imported, mixed, or blended products. We, therefore, looked to existing laws and regulations that currently govern the labeling of imported products as to their country of origin. Thus, an imported product in a consumer-ready package must also contain a country of origin label. Such product would require no change from current practice. However, if the imported product is a side of beef, for example, it currently would lose its country of origin label once it enters a U.S. plant for further processing. Under the COOL requirement, the original country of origin identity would need to be carried through to the retail level.

Products with an origin that includes production or processing steps that occurred in more than one country would need to bear labels that identify all those countries. For example, strawberries produced in Mexico and processed in the United States or pork from animals born in Canada and raised and slaughtered in the United States would be labeled just that.

Blended products are a little different. These are products with differentiated covered commodity components, such as salad mix, or like product components, such as ground beef, of different origins that are combined together for retail sale. Here, if each covered commodity component can be individually identified, each must be individually labeled. For example, if a bagged salad includes U.S. lettuce and Mexican carrots, the label must say so. If the covered commodity components cannot be individually identified, they must be labeled in order of their predominance. For example, if ground beef includes components from Canada, the U.S., and mixed origin product, a label might say: Product of Canada; Product of the U.S.; Product of Mexico, Raised and Slaughtered in the U.S.

We recognize that a number of State and regional labeling programs already exist. While the Farm Bill country of origin labeling requirements in no way inhibit the use of these labels, they cannot be accepted in lieu of the country of origin labeling requirement. First, the law says country of origin, not State or region. Second, the labeling requirements for the existing certification programs, such as Iowa Pork, may not meet the labeling requirements of the Federal law. And third, if this sort of substitution were to be accepted for domestic product, similar treatment would likely be required for imported product, allowing State, Provincial, or other regional labels U.S. consumers might not equate to particular countries.

As the Farm Bill language indicates, consumer notification as to the country of origin of covered commodities can occur in a variety of ways. Many fruit and vegetables already have country of origin labels directly on the product. Some beef, lamb, and pork have labels on their package, too. These labels, as well as signs on a display or bin, or other forms of notification should prove acceptable.

The COOL legislative language does not specify what records are acceptable to verify country of origin claims. It only says that the Secretary may require persons in the distribution chain to maintain a verifiable recordkeeping audit trail to verify compliance. The law also requires any one person in the business of supplying a covered commodity to a retailer to provide to the retailer information indicating the country of origin of the covered commodity. At the same time, the law prohibits the Secretary from establishing a mandatory identification system to verify the county of origin of a covered commodity. Therefore, retailers and their suppliers must maintain records that verify the country of origin of covered commodities.

The law directs USDA to partner with the States to assist in the administration and enforcement of this provision. As you know, USDA has a long history of State partnerships and we have proven that working together works. Some States already have a country of origin labeling provision on their books. Florida, for example, has had a law mandating labels for fruit and vegetables for years. In fact, last year, AMS Administrator A.J. Yates and other staff traveled to Florida to review their system.

Experience at the state level shows us that costs associated with labeling fruits and vegetables are very different than costs associated with labeling meats. Fruits and vegetables from other countries are already labeled with the country of origin; therefore, the system is far less complex than with meat from animals that may be born and raised in one country and then slaughtered in the United States.

Record Keeping

It is apparent that country of origin labeling will require the maintenance of records sufficient to verify claims of origin. As many as 2 million farmers, ranchers, and fishermen could be affected. An estimated 100,000 food handlers (packers, processors, importers, wholesalers, and distributors) could be impacted. At the retail level, 4,200 businesses operating some 31,000 retail outlets will be involved.

It is important to note that even with a modest level of participation by retailers in the voluntary program, the need for record keeping by suppliers could expand to virtually the entire population

of producers, processors, and distributors. Early in their production process, few covered commodities are produced for a specific market. Rather, the decision on how a covered commodity is ultimately marketed to consumers is most typically made far from the point of production. For example, even in a relatively simple situation where a calf is born and raised on a farm in Virginia, finished in a feedlot in the Texas panhandle, and slaughtered and processed by a Kansas packing plant, record keeping will need to be maintained to establish country of origin. In each of these steps the animal is owned and managed by different parties. The decision on how the component cuts of this animal are marketed is made at the packing plant in Kansas. Seldom, if ever, will all of the cuts from one animal be marketed to a single retail outlet. The strip loins and ribs could be marketed in the food service sector while the round cuts are destined for retail. To provide the required country of origin claim information for covered commodities sold at retail, the entire production system must have the appropriate record keeping in place.

On November 21, 2002, in accordance with the Paperwork Reduction Act of 1995, USDA published a "Notice of Request for Emergency Approval of a New Information Collection," in the Federal Register. This notice detailed the anticipated paperwork and recordkeeping requirements associated with the voluntary country of origin labeling program. In estimating the hours needed to comply with country of origin requirements, USDA drew upon its experience with the oversight of auditable and verifiable origin-based documented marketing programs. The cost estimate associated with the new record keeping requirements generated a wide range of comments and opinions. The comment period was extended an additional 30 days due to the interest raised by various parties regarding the estimated cost burden. When the comment period closed on February 21, 2003, USDA had received 98 comments. With these additional comments taken into consideration, the topic of cost burdens associated with record keeping for country of origin labeling will be revisited as part of the regulatory process to develop mandatory country of origin requirements. Again, because food handlers and retailers are margin operators, we are concerned that America's farmers and ranchers will bear the ultimate costs.

It is also important to note that due to the significant nature of the mandatory country of origin regulation, a comprehensive economic impact analysis will be required to evaluate all costs and

benefits associated with implementing this rule. The economic analysis will consider costs of product segregation, inventory management, process verification and other costs throughout the industry beyond just record keeping.

USDA Outreach

To date, USDA has formally sought public comment on country of origin labeling three times. Besides the recordkeeping notice and the voluntary guidelines, USDA issued a press release on July 25, 2002, seeking comments to assist in the development of the voluntary guidelines. Once a proposed rule for mandatory country of origin labeling requirements is drafted and published, USDA will formally solicit comments a fourth time. All of these comments are posted on the Web site USDA created for COOL – http://www.ams.usda.gov/cool/.

On March 5, Secretary Veneman announced a series of listening and education sessions that will be held throughout the country to gather additional public input and provide interested parties more information about the new country of origin requirements. Representatives from USDA will be coordinating these educational sessions and plan to travel to 12 States over the next two months. These States represent a cross section of the food and agriculture sector and include California, Florida, Louisiana, Minnesota, Missouri, Montana, Nebraska, North Carolina, Pennsylvania, Texas, Washington and Wyoming. The first session is scheduled for next Tuesday in North Carolina. In addition to these USDA-sponsored events, we are finalizing arrangements to speak on this issue in Alaska, Iowa, and elsewhere to industry group conferences.

Conclusion

Mr. Chairman, the Congress has tasked USDA with the responsibility of implementing a country of origin labeling program for a wide range of food products. We take this mandate seriously and will do our utmost to implement a program that meets the requirements of the law and minimizes the burdens on all concerned.

I am grateful for the opportunity to testify this morning on behalf of USDA. I will be happy to answer any questions from you or the other Subcommittee Members. Thank you.

Country-of-Origin Labeling Law

Mike O'Brien, Schnuck Markets, Inc.

Senator Talent, Members of the Agriculture Subcommittee, fellow panelists and other distinguished guests – I'm Mike O'Brien, Vice President of Produce for St. Louis-based Schnuck Markets, Inc. Schnucks is a family-owned and operated supermarket chain of 100 stores in six states.

My counterparts in meat, seafood, and grocery have joined me today to help communicate concerns regarding the **Farm Security and Rural Investment Act of 2002** as it relates to Country-of-Origin labeling. At Senator Talent's request, we will be speaking on behalf of the Food Marketing Institute and its 2,300 member companies representing 26,000 stores.

Although well intended, we believe the part of the law specific to country-of-origin, misses its mark. Designed as a way to show support to domestic farmers and producers, the **COOL Law** gained credibility through claims it would enhance food safety and security.

From our standpoint, it does neither. What it WILL do is, level serious repercussions upon the industry. The COOL Law, as it stands, will have a far-reaching and negative impact on the entire food distribution marketplace -- from growers and ranchers to wholesalers and retailers -- and, ultimately to consumers.

First, let me clearly state that retailers are **NOT opposed** to country-of-origin labeling; we are opposed to the extent to which this law mandates not only labeling, but also tracking and long-term record-keeping. Furthermore, this law places the bulk of the responsibility for all this, squarely on the shoulders of grocery retailers.

Schnucks, like many retailers, has been providing country-of-origin information to consumers on a variety of products for quite some time. However, country-of-origin as defined by the law extends back to the farm or ranch on which the product originated.

Let me take you through a few of the finer points of the COOL Law, as retailers currently understand it:

The COOL Law requires that retailers like Schnucks, be made primarily responsible for informing customers of the country-of-origin of all non-processed beef, pork, lamb, fresh and frozen fruits and vegetables, fresh and frozen seafood, and peanuts.

Under the law, retailers must collect and retain thousands of records in a two-year period. Both retailers and suppliers risk fines of up to $10,000 per violation, per store for compliance errors.

Again, if the law targeted food safety, it would have been applied to all food sales. Grocers receive some of the very same products food service organizations receive yet; this group and other key product suppliers have been spared the burden of compliance.

I would like to interject that retailers have worked hard to shorten response time in a recall situation. Schnucks, for instance, is able to track and remove food from our stores and warehouse within a matter of hours. The extensive tracking required by the law will have absolutely no affect on the efficiency of this process.

If the law targeted food *security*, the FDA would not be establishing a separate set of protocols.

Currently, the USDA and FDA have strict standards that all products must meet in order to be taken to market. We are concerned, however, that this law could create a false perception that imported products are less safe and of a lower quality than U.S. products.

All imported produce, for instance, is inspected by a government agency before the product crosses our borders. The USDA and the FDA inspect the produce to make sure they adhere to government grading and quality standards, insects, and pesticide levels. Imported produce quality and safety is as high or higher than domestic.

Federally regulated country-of-origin labeling is believed by some to be a form of "protectionism" and we fear, may prompt retaliation from U.S. global trading partners.

The country-of-origin processes mandated in the COOL Law make it essentially a domestic *marketing* program. In that respect, it is similar to a law now in effect in Florida.

I want to stress to you that the COOL law, as it is written, is very different than **Florida's Produce Labeling Act of 1979**, which only requires signs or labels for imported produce. The latter makes no mention of record keeping, segregation, audits, or $10,000 fines.

The Florida law was designed to help sell more Florida produce and, again, it is not a food safety law. Should our government really be involved in marketing?

No one knows our customers better than we do. We work hard to deliver what our customers tell us they want and need. Last year, out of 22,000 calls logged by the Schnucks Consumer Affairs team, only 9 pertained to country-of-origin. That's not to imply there is no interest. I am certain that, on the surface, many people would favor having as much information as possible provided at the point of purchase -- but, at what price?

Financial Impact:

The USDA estimates that the food production and distribution system will spend $2 billion in LABOR alone to establish record-keeping systems to maintain only the first year's records. We believe this estimate under-projects labor costs and fails to consider the significant technological costs involved.

Early estimates do not take into account additional expenses retailers will face from farmers, shippers, handlers, wholesalers, distributors and other retailers as they overhaul their entire recordkeeping, labeling, warehousing, and distribution systems -- all of which will be passed on to the consumer. Nor, do they include the impact of potential fines.

You see, the supermarket industry, as a whole, operates on a very small margin basis. The industry average before tax net profit is 1%. That means we make only a penny for every dollar we earn.

Schnucks estimates that in the first year alone, the cost of record keeping, signage, employee training and infrastructure changes will

easily exceed $3 million. Implementation of the law would deal a devastating blow to the profitability of retailers, suppliers and producers.

Let's consider this -- Schnucks currently sells 15 different varieties of tomatoes in our supermarkets. At various times of the year we will have tomatoes from Florida, Mexico, California, Israel, Holland, Mexico, Missouri, Tennessee, Arkansas, and Illinois. Our philosophy is always purchase for quality -- over cost. If we were to rank our tomatoes by quality and drop the two with the lowest quality we would lose two domestic growers.

The Missouri tomato grower, the epitome of the small farmer, must adhere to the same guidelines as large growers in Florida and Mexico.

Schnucks is proud of its efforts to support small farmers by promoting domestic and "home grown" products and proudly labeling them as such. We've learned that to print "Product of USA" labels and create an audit trail will generate expenses that will cripple smaller growers.

One of our suppliers has commented that, after laying off 12 people, he is now facing the prospect of spending $3.5 million on a new ink-jet printing system just to begin addressing the law's requirements.

Simply put, this law will be a burden for the very people it is trying to protect.

Let's consider the impact of the law on Produce Departments:
All produce items have PLU (price look up) codes for identification at checkstands. The PLU -- has a retail, cost, and item description attached to it in our item maintenance system. Currently, the PLU has no designation for country-of-origin; large tomatoes from Mexico, Florida or California, for example, use the same 4-digit number.

In order to keep records for these items at store level for two years we would have to update, at considerable costs, our current technology and redesign our warehouse and invoicing systems.

In addition, segregating products by country-of-origin, to the extent specified in the law, will create mammoth problems in warehousing, distribution, and storage at store level.

The law is just as problematic for the Meat Department:

The meat department has different, but equally disturbing issues with this legislation. The COOL law says meat products may bear the label "Product of the United States," only if the animal from which the product is derived was born, raised and slaughtered in the U.S.

The guidelines also specify that retailers, processors, packers, producers, and importers must maintain "auditable records documenting the origin of covered commodities."

Many advocates of country-of-origin labeling for meat fail to recognize the complexities involved in such a process. Some very common livestock production and distribution practices will present serious logistical and financial challenges under the new law.

Missouri is the #2 state in the production of cattle. After the retailer, cow-calf operators will be hardest hit.

Cattle born in February of this year will fall under this law. That means, farmers should be reacting to this law right now and many still have no idea of what to expect. We have no doubt that this law could force some of the smaller producers out of business.

Using beef as an example, let's consider what these labels may look like, industry-wide.

Ground beef from beef blended during the grinding process must bear a label stating the applicable country-of-origin in descending order of prominence by weight.

A typical retail label on beef might read, "Beef from cattle with the following countries of origin: born in Mexico, raised and slaughtered in the United States; and born and raised in Canada and slaughtered in the United States." But, *conceptually*, that label may well change the next day when a new batch arrives bearing another history.

At Schnucks, fresh meat is scaled and labeled at store level and neither pieces of equipment have the capacity for this information. (Compliance would create a domino effect -- larger labels mean larger printers, etc.) Labels this size could cover up a substantial part of the product currently visible through packaging.

Seafood is unique in some way but, still impacted significantly by the law:

The seafood industry faces the same obstacles of the country-of-origin labeling that other covered commodities are experiencing.

But, unique to the department, the seafood commodities will have an extra set of labeling rules. The law will also require the labeling of all seafood as "wild harvest" or "farm raised."

The seafood industry's supply chain is comprised of literally thousands of independent fishermen, processors and distributors. At every step, seafood is potentially changed in its product form. Therefore, under the law, each step would require a unique set of procedures to be able to identify the product in a verifiable audit trail.

How would live products (Lobsters and Crawfish) be segregated and identified?

One of the attributes of the seafood industry and something our customers count on is its product variety. Maintaining this variety however, will be difficult -- if not impossible under this law.

Many seafood products are seasonal and originate from different parts of the world. At the same time, many products can be acquired from multiple sources of supply.

If the law were enacted today, an average Seafood Department in one of our stores would be required to have more than 8,300 records on hand over two years.

Inconsistencies in the Law:

There are some glaring inconsistencies in this law. For instance:

- I mentioned earlier that food service facilities were excluded, yet they represent fifty percent of the market for the same covered commodities retailers receive.

- Poultry is noticeably excluded from the list.
- Peanuts must be marked for the country-of-origin but not pecans, almonds or pistachios. But, why include peanuts at all? Planters, Fishers and Schnucks Private Label company all currently source 100 percent of their products from the Unites States.
- Birds Eye, for instance, must now include country-of-origin on frozen green beans but, the law does not apply to Del Monte's *canned* green beans. Frozen apples are covered but frozen apple pies are not.

The primary source of our Schnucks label frozen fruits and vegetables is the United States. On many items, we only buy from other countries when U.S. supply is unavailable.

The company we hire to package our products also buys product from a dozen suppliers in Europe, Asia and Central and South America. The new law will require us to stock labels with all of the possible country-of-origins. This becomes even more complicated when we are speaking of mixed vegetables. Each vegetable could

have been sourced from three different countries. We would have to stock 27 different labels to cover the potential possibilities.

The bottom line -- mandatory country-of-origin labeling will add costs to the final retail for the food that your constituents purchase at all retail supermarkets across the nation.

CONCLUSION:

We want to publicly thank Senator Talent for encouraging the USDA to conduct information forums about the law in communities across the country. Even with what we have been able to learn, there are still so many questions that remain among those in the industry. Likewise, we are all in support of the customer's right to know. But, if that was the intention of this legislation -- we don't think it gets us there. Instead, it creates confusion and plenty of additional costs to the food chain. We ask that you reevaluate this legislation and the *unintended results* that may follow its implementation:

1.) In reality, this law may make it cheaper to buy from foreign, rather than domestic sources.

2.) The law could give chicken and turkey products an unfair advantage in the marketplace over beef, pork and seafood.

3.) In order to limit exposure under this law, retailers will be compelled to source covered commodities only from those who can afford the systems necessary comply. This will devastate some of our smaller suppliers.

4.) Retailers can not absorb the costs associated with implementing the law. Consequently, we will have to ask suppliers and producers to share the load. This will, inevitably and unavoidably, result in higher costs to consumers.

In conclusion, let me say that we believe the law of the marketplace. We believe the market should dictate country-of-origin labeling -- with all due respect -- our government should not. We operate in a global economy and the consumer decides what we sell based on value. Right now, the "market" is hurting.

Consumer confidence today, is very low and spending habits have become more conservative. This has put a strain on all types of

retailers. We are asking you to help ensure that this legislation does not further burden the food system.

Finally, speaking on behalf of our nation's retailers, the customer always comes first. If our consumers want country-of-origin labeling and are willing to pay the additional costs associated with such a program, the supermarket industry will meet that consumer demand as it meets consumer demands every day.

On behalf of Schnuck Markets, Inc., FMI and its member retailers, I thank you for your time and consideration of the issue.

Testimony of Ken Bull
Vice President for Cattle Procurement
Excel Corporation, Wichita, Kansas

On Mandatory Country of Origin Labeling

Before the Senate Agriculture Committee

April 22, 2003

Thank you Senator Talent for giving me the opportunity to testify before your committee today on what I believe is a well intentioned, yet severely flawed law.

Mandatory country of origin labeling – COOL for short – for beef and pork is a concept that has been discussed for many years. As I understand it, supporters believe that American consumers want to know more about where their food comes from and are willing to pay more to support the infrastructure necessary to identity preserve their food. Some supporters I believe are motivated by another reason – to block the trade of cattle and meat with U.S. trading partners – especially Canada and Mexico.

COOL is now the law, and we are actively trying to figure out what we're going to do to comply with it. I appreciate the chance today to highlight for the committee the complexities that we will face as a result of this law.

First – this is a retail labeling law that mandates there must be a "verifiable audit trail" to prove that the labels on products are true and accurate. The law also prescribes $10,000 penalties for violations of the law.

In an effort to better understand the law I recently met with AMS staff in Washington to ensure that my read of the law was right – and it is. A verifiable audit trail means that I must be able to provide documents that back up the claims made on the meat I market to our retail customer. In order for me to do this, the feeder or auction

barn from whom I buy must be able to provide these documents and I must be able to attach these documents to the meat I sell at retail.

In addition I have been notified by retailers that if I intend to sell them meat I will have to assume liability for any misrepresentation on their labels – so you can imagine I'm going to take every step necessary to ensure that I'm keeping my customer – and myself – in compliance with the law. Finally, retailers are demanding that I develop an auditable record keeping system that will give them the assurance that we will be able to comply and not subject them to possible problems.

An additional concern that has not been identified is that under the meat inspection act, which is governed by another agency, the Food Safety Inspection Service, to apply a false label to a product is to ship misbranded product. This is punishable as a felony and the product involved is likely subject to recall. I'm not going to risk going to jail for selling the product or going to subject my company to a recall – so again, you can bet I'm going to follow the law. I simply cannot certify anything I do not know to be absolutely true. This interpretation of the meat act was confirmed when I met several weeks ago with the Deputy Administrator of the FSIS and the chief of the labeling branch.

While we already do some branding today – it is based on attributes that reflect the market niche a retailer wants to uniquely fill. These brands are reliant on factors that are applied in our plant – and importantly, are cost effective. The COOL brand relies on factors from the birth of the animal, following it through the production phase and into our plants, then on to retail, all at significant cost and questionable demand.

We invest significant revenue in developing and marketing brands. These investments are done only after significant research to demonstrate that the benefits or returns will far outweigh the costs.

There is much speculation on the cost of COOL – and I certainly have my own idea of the cost, but frankly I believe the true cost is that

there stands to be significant change in the cattle and hog industry as a result of this law. We have done cost estimates that quickly led us to conclude that we are not going to make the investments it would take to be able to run our plants the way we run them today.

To create the kind of identity preservation system this law requires would cost us $40-50 million per plant – and even then, there would be the risk of an unintentional mistake.

A more likely scenario is that packers would call only on feeders that have the best, most reliable, audit proof record systems – especially electronic ear tags. I met with the deputy administrator of the USDA Packers and Stockyards Administration to ensure that this was consistent with P&S regulations, and I have been assured that steps such as these are entirely within the scope of the law. We will seek to maintain a pro-active dialogue with the agency as this unfolds. We believe we are on solid footing with P&S in saying that if we suspect that records are not reliable we will have a difficult time being able to bid on livestock.

We believe one probable outcome of the law is that packers would most likely dedicate plants as U.S. only origin or mixed origin and then segregate production by days so that only like-origin animals are processed on given days. This move would eliminate marketing options that producers currently enjoy.

Today we sort beef carcasses in about 27 different ways – by grade, certified programs and by other factors. Under this law we layer in at least a doubling of these sorts. Our coolers are the size of football fields – and the changes this law necessitates aren't cheap. One example of an unrealized cost is that currently FSIS regulations require us to leave a three-minute gap between grade sorts. Down time in our plants is about $1100 per minute – so increasing the number of these three-minute gaps adds up in a hurry.

Of particular concern is something we learned from AMS – and that is there is zero tolerance for error. In our meeting with AMS we painted a hypothetical scenario that goes like this -- say we

processed a group of cattle on Monday and in reviewing records we found that somebody made a mistake and a Mexican born animal got into the mix of 1500 head of U.S. born, raised and slaughtered. We learned from AMS that in that scenario all 1500 head are potentially mislabeled or misbranded – meaning we possibly have created a huge list of violations. We must notify the retailer and the retailer must not market the product because it would be a willful violation on every package of meat from that 1500 head of livestock. All of the product from these 1500 head that was going into retail is now subject to a class three recall – bringing great harm to our reputation and our brand. This meat would now have to be diverted into a food service channel at additional cost and substantial discount – all by virtue of a simple human error – with no impact to food safety whatsoever.

Another huge concern for us is the impact on cow/calf operators and the dairy industry. There are beef cows as much as a dozen years old – and many of these animals do not have acceptable documentation. Dairy cows live five to eight years, and many have crossed the Canadian border. There is insufficient documentation here as well. Much of the cow beef ends up as lean trim that is blended with less lean trim for ground beef production and sold at either retail or food service. Under the law this cow beef will be relegated to food service as it's only market for a long time. If you're a cow calf or dairy operator you'll want to pay close attention to this loss of the retail demand base, and the marketability of these animals. AMS again has confirmed our observations and I would strongly encourage producers to understand this likely possibility.

In closing – there is much to be learned as the law and its enforcement unfolds. USDA has to implement the law that was passed, and from where I sit, I see the department doing just that. My hat is off to Undersecretary Hawks and his team in doing this unenviable job. AMS, P&S and FSIS have their work cut out for them. So do we. I am happy to answer any questions you might have.

Senate Agriculture Subcommittee on Marketing, Promotion & Promotion
Written Testimony of Steve Owens, Joplin Regional Stockyards, Inc.
Mandatory Country of Origin Labeling
April 22, 2003

Steve Owens is Vice-president and owner, along with Jackie Moore, of Joplin Regional Stockyards, Inc., which has two locations in Southwest Missouri. The Joplin facility is located 13 miles east of Joplin, Missouri and the Springfield facility is located at Kansas and Division in Springfield, Missouri. Joplin Regional Stockyards, Inc. primary business is marketing cattle for producers located in Missouri, Oklahoma, Arkansas and Kansas. Joplin Regional Stockyards, Inc. has 105 employees to help service our approximately 20,000 cattle producers. Over the last two years we have averaged selling 455,000 cattle per year at a value of $225,485,000. Our services include three regular weekly auctions, seasonal "value-added" sales, commingled cattle sales, video cattle sales with all auctions broadcast live over the Internet.

The primary market area for Joplin Regional Stockyards, Inc. is within a 150-mile radius of our Joplin facility. This includes 27 counties in Missouri, 6 counties in Arkansas, 8 counties in Oklahoma and 6 counties in Kansas. Our service area for video cattle is within a 400-mile radius. Within the primary market area there are 43,805 producers representing 2,865,901 total cattle and 1,315,543 beef cows based on 1997 census information.

The 2002 Farm Bill includes law that requires mandatory country of origin labeling at the retail level on certain commodities including beef. This mandatory labeling will start on September 30, 2004. For beef to be labeled as U.S. beef, it must be from an animal that is exclusively born, raised and slaughtered in the United States. The law also states that a verifiable recordkeeping audit trail be maintained by those who prepare, store, handle or distribute a covered commodity, but specifically says that a mandatory identification system shall not be used. There will be a fine of $10,000 per violation incurred at either the retail or packer level. This labeling law is only in effect on beef sold in the retail sector (grocery stores) and not on beef sold in the food service industry (restaurants, fast food, etc.).

We have spent the last four months trying to determine how this law is going to effect Joplin Regional Stockyards and more importantly how it is going to effect the cattle producers in our market area. We support the labeling of the beef United States cattlemen produce because of its quality and safety characteristics when compared with that of other countries. We also feel that the system utilized to achieve this need to be taken into consideration to determine the costs and benefits. From our investigations, meetings and discussions with various people in the industry and government, the following is our projected effect the mandatory labeling will have on our producers:

System mandated by Retailers and Packers to meet the requirements of the law

- Retailer/Packer will require that their suppliers of cattle (feedyards, stockers, cow calf producers) maintain adequate recordkeeping to prove that these animals were born and raised in the United States.

- Even though the law specifically prohibits a mandatory identification system for producers, it also requires the country of origin be specified for all commodities, including those of United States origin. This is how the USDA is interpreting the law. Since the law is directed at the retailer/packer, they will mandate this identification system from their suppliers.

- Producers will be required to maintain records that will prove U.S. origin and identify these cattle in some way before or at the time of first marketing. The producer will be required to sign an affidavit or possibly have third party verification to these facts.

From discussions with the producers in our area concerning the above facts and potential scenarios leads us to believe that a significant number of them will elect to either not participate or quit raising cattle all together. There will be a cost of meeting the requirements of this law that includes recordkeeping, identification and additional cooler space at the packer and retail level. These costs will more than likely be passed back to the producer. The benefits of mandatory labeling are harder to determine. Will the consumer pay more for U.S. beef? We believe that a majority of Americans do desire beef born and raised in the United States. Do they have enough extra money to spend on U.S. beef to make this law beneficial to U.S. cattle producers? We believe that this is yet to be determined. We feel that a bigger concern for the cattle producers in our area is the additional hassles that this law creates. The majority of our producers are part-time or hobby cattlemen. They raise cattle as an income supplement to another job. In Missouri there are 60,204 beef cow operations of which 47,137 have less than 50 head. The average cowherd in our market area is 30 head, which means there are significant producers who have 20 or less cows. The potential requirements of this law will outweigh any financial benefit that the smaller producer will receive from mandatory labeling. Missouri is reflective of what the average beef cow producer resembles in the United States.

Joplin Regional Stockyards, Inc. is supportive of labeling of beef, but we feel that the requirements of the current mandatory guidelines as we understand them will be very burdensome, especially on smaller cattle producers. We feel that a system that does not require the producer to identify his cattle or a voluntary system that will help us determine the true benefits of product labeling is a more prudent choice at this time. The risk of permanently damaging the cattle-producing segment of our agriculture economy is significant.

Testimony of Phil Howerton
U.S. Senate Agriculture, Nutrition and Forestry Committee
Field Hearing on Country-of-Origin Labeling Law
Joplin, Missouri – April 22, 2003

Senator Talent, Representative Blunt and distinguished guests. My name is Phil Howerton, a pork producer from Chilhowee, Missouri, and I am here to testify on behalf of the Missouri Pork Association. I want to thank you for holding this important field hearing on the troublesome country-of-origin labeling law.

Missouri pork producers strongly oppose mandatory country-of-origin meat labeling. We are in opposition because pork producers at the farm level will have no way to recoup the additional costs of mandatory country-of-origin meat labeling to their hog operations through increased consumer prices at the retail level.

We do support a voluntary program for those pork producers who establish a voluntary label that can gain a price premium paid to them by willing consumers. The National Pork Producers Council, our national trade association, is not aware of a single pork producer in the U.S. that is participating in the current voluntary program. We believe that this is evidence that the additional costs of participating in this program far outweigh any benefit that may accrue to a participating pork producer.

Specifically, Missouri pork producers oppose mandatory country-of-origin meat labeling because -- it will not raise live hog prices long-term, it will add additional on-farm production costs to hog operations, it will reduce U.S. pork exports globally, it will decrease domestic U.S. pork consumption, and it provides an unfair economic advantage for chicken and turkey products, to name a few. Let me embellish further each of five these points.

5 Reasons to Oppose MCOOL

(1) MCOOL will not raise live hog prices and could result in lower hog prices due to the law's requirement of extensive record keeping, segregation and tracking of imported animals by producers and packers. Given the lack of research evidence of consumer interest in country -of -origin labeling for pork, the increased packer, processor, retailer and USDA costs associated with labeling will be passed back to producers in the form of lower hog prices.

(2) MCOOL will add production costs to my hog operation in order to meet the burdensome "verifiable record keeping audit trail" standard set in the law. It appears to us that any certification and audit system must have at least three components-- a detailed records system, legal documents to guarantee origin and the existence of records, and third-party audits of these records. All of these impose direct costs on producers, not to mentions potential liability for non-compliance.

(3) MCOOL will reduce U.S. pork exports. An economic analysis of the MCOOL program, performed by economists for the U.S. pork industry and Iowa State University, concluded that by the year 2010, U.S. pork exports could be 50 percent lower than they would be without a labeling program. This is because Canada, which currently supplies 5.7 million of live hogs to the U.S., would be forced to process these hogs in Canada. Canada's pork output would increase and, since Canadian consumption will not grow by much, this pork would compete directly with U.S. pork both inside the U.S. and in the common export markets. Lower U.S. exports would reduce the U.S. pork industry's value-adding effect for corn and soybean, thus impacting all of the U.S. agriculture. The U.S. will likely once again become a net importer of pork.

(4) MCOOL will cause a reduction in domestic pork consumption. According to the same study, a full trace-back system implemented under MCOOL will increase U.S. farm-level pork production costs by ten percent or $10.22 per head. This is equivalent to a ten percent increase in the cost of on-farm production or approximately $1.02 billion for the U.S. pork industry. Assuming the ten percent increase in costs is passed on to the retail level, U.S. consumers will likely demand seven percent less pork due to higher prices. A presumably less costly certification and audit system will have a smaller but still negative effect on U.S. consumption

(5) MCOOL provides a significant economic advantage to chicken and turkey products. Poultry is the main competitor of beef and pork in the retail meat case and is exempt from MCOOL and thus will not face any additional costs to the poultry chain.

More Questions Than It Answers

The flawed mandatory country-of-origin meat labeling law also raises more questions than it answers. Here are two questions that really trouble me.

1. Why does MCOOL exempt chicken and turkey products and the entire foodservice sector - restaurants, fast-food establishments, lunchrooms, cafeterias, lounges, bars and food stands? Does Congress believe that U.S. consumers only have the right to know where their pork, beef and lamb come from, but not their chicken and turkey – and only when they eat at home, not when they dine out?

2. USDA's MCOOL guidelines clearly have periodic audits in mind when they require a verifiable record keeping audit trail. How frequent and how in-depth will such audits be and who will pay for them? Additionally, will legal affidavit requirements by packers be required of producers for each load of hogs? Finally, what are the liability ramifications of these requirements?

Summary

Senator Talent, it is becoming increasingly clear, that mandatory country-of-origin meat labeling is going to be very costly for pork producers. It is our belief that the additional costs, including the liability issues of participating in this program far outweigh any benefits that might accrue to pork producers at the farm level. Thus, the Missouri Pork Association urges you to oppose mandatory country-of-origin meat labeling due to the absence of value to the pork chain or consumers and increased costs placed on pork producers. We believe the mandatory country-of-origin meat labeling program should remain voluntary.

Thank you for allowing me to testify today and I would be pleased to answer any questions.

Missouri Stockgrower's Association

A state affiliate of R-CALF-USA United Stockgrowers of America

Purpose---To represent animal production agriculture in Missouri with honesty and integrity. To establish a means for all cattle producers to fellowship with one another in an environment of fairness and equality. To educate the public and encourage public policies that benefit Stockgrowers and their communities.

Testimony – For Senator Talent, April 22, 2003, Joplin, Missouri

Senator Talent, Staff, and Guests, it is a distinct honor to testify before you today on behalf of the Missouri Stockgrower's Association. I am the current President of the Missouri Stockgrower's Association and a past President of the Missouri Cattleman's Association (1999-2000). Senator Talent, some in the cattle industry would have you believe the Country of Origin Labeling portion of the 2002 Farm Bill was slipped by Congress in the middle of the night. On the contrary, the Country of Origin Labeling section of the 2002 Farm Bill was placed into law at the request of 110 distinct livestock and consumer groups representing grassroots cattlemen and cattlewomen from all over the United States. I say grassroots for a very good reason: Grassroots cattlemen and cattlewomen make what living they make in the cattle business. They are not staffers or officers of cattle organizations; they are hard working United States, tax-paying citizens, simply trying to make government work for them. These good people telephoned, wrote, faxed, and emailed Senator Bond, Senator Carnahan, and all nine representatives asking them to support Country of Origin Labeling of beef. This was not a spur of the moment decision. Senator Grassley and Senator Tim Johnson, the authors of this law, both worked many hours on behalf of these grassroots ranchers and farmers. There is a big difference between someone who is presumably representing the beef cattle industry and someone who derives their sole source of income from raising and marketing a set of beef calves. As the Free Trade in the America's Agreement reaches maturation, the ability to differentiate our superior, safe, beef in the market place, becomes absolutely essential.

My colleagues in the Missouri Cattleman's Association have asked Congress to repeal the Country of Origin Labeling portion of the 2002 Farm Bill. They have been quoted in numerous publications requesting that Country of Origin Labeling be solely voluntary. They desire a so-called "market driven" approach to Country of Origin Labeling of beef. Approximately, twenty-two (22%) percent of ground beef in the US is manufactured from imported meat. For the year 2002, the U.S. imported 200 million dollars more meat than the U.S. exported. Since we primarily import low quality, commodity red meat, our trade deficit in pounds of meat is much greater. Packing companies have been purchasing foreign meat and mixing it with U.S. beef. These companies can purchase this commodity meat, which is in direct competition with our slaughter cow and bull markets, for 45 to 75 cents per pound. U.S. neck trim meat is priced today, April 22, 2003, at $1.35 cents per pound (wholesale price in Springfield, Missouri). Packing companies are currently purchasing the cheaper foreign commodity meat, mixing that meat with our US beef trimmings, and then selling the manufactured product disguised as U.S. beef. The cost savings to the manufacturer is a matter of simple arithmetic. For that reason, voluntary Country of Origin Labeling of beef will not occur. Voluntary labeling of beef has been available to the packing and retailing industries since the early 1970's. Mr. William Sessions, Deputy Administrator, Agricultural Marketing

Service, USDA, told me on April 11th, 2003, that **no** company had ever participated in voluntary labeling of beef.

The argument that no one has asked for Country of Origin Labeling of beef has been proposed by the meat packing industry. Keith Carmichael, Editor of *The Midwest Cattleman* magazine responds to that statement as follows: "The argument is that {consumers have never asked for it} or {we've never had a request for that}. Give me a break. They didn't {ask} for the hoola-hoop either, but they sold millions and millions of hoola-hoops. Processors argue that if labeling beef {Made in the USA} were more profitable, they would have been doing it already. I agree, but obviously what has been most profitable is importing beef and selling it under the guise that it was produced here in the United States."

It is the USDA's responsibility to enforce the Country of Origin Labeling law as written. They have made their own interpretation of this law. They have been instructed by Secretary of Agriculture Ann Veneman to implement this law in a manner that will be least burdensome for producers. The Country of Origin Labeling law is directed at retailers, not producers. Meat and muscle cuts are to be identified, not individual animals. To prove "Born, Raised, and Slaughtered in the USA", there may need to be a minimum degree of proof required by the USDA from cattle producers. The Agricultural Marketing Service has released a list of the type of records they desire for proving ownership. The records are no more than those required for tax purposes. A simple feed bill, veterinary bill, or calving record will suffice. It is imperative that packing companies not be allowed by the Packers and Stockyards Administration to force more onerous record keeping requirements and third party verification on livestock producers. We should not be forced to reveal our proprietary inventory numbers to those in an adversarial role.

The Missouri Stockgrower's Association believes some sort of "grandfather period" should be attached to the Country of Origin Labeling law. Cattle that are purchased prior to September 2004 may not be legally identified as "born and raised" in the USA. A grandfather period would allow these older animals to enter the food chain without discrimination. The USDA identifies all imported meat and all imported live animals. The primary role of the Country of Origin Labeling law should be applied to this imported meat and animals. For many reasons, some sort of proof of ownership is reasonable in this troubled time we live in. It is possible for an enemy of the Untied States to rustle a load of cattle, inject them all with a prohibited medication or disease, and sell them throughout several states. Under the current system of operation, many states do not require any proof of ownership to sell cattle. States without a brand law do not follow cattle ownership closely. A minimum proof of ownership will greatly reduce the chances of this scenario.

Senator Talent, the Missouri Stockgrower's Association and the United Stockgrower's Association (R-CALF-USA) sponsored two Country of Origin Labeling informational meetings in Springfield, Missouri and Kingdom City, Missouri, on April 10th and 11th. The overwhelming consensus at both these meetings was as follows: 1) We want the opportunity to differentiate our product in the market place and Country of Origin Labeling is that method, and 2) We want this law to cause us the least amount of grief in record keeping and government regulation. Although the Missouri Cattleman's Association has asked you to repeal the Country of Origin Labeling law, the Missouri Stockgrower's Association believes this industry is ready to implement Country of Origin Labeling

of beef. We should not throw the baby out with the bath water. We should scrub the baby clean, and then throw out the bath water.

There are some parts of the Country of Origin Labeling law that may not be right for the beef cattle industry. We will work with you to develop new regulations or a revision of the Country of Origin Labeling law that will make it work for both cattle producers and beef consumers.

Sincerely,

R. M. Thornsberry, D.V.M.
President
Missouri Stockgrower's Association

mt/RMT

Missouri Cattlemen's Association
Testimony of Ken Disselhorst

Chairman Talent,
Good morning. My name is Ken Disselhorst. I am currently serving as President of the Missouri Cattlemen's Association (MCA). We represent beef producers in the state of Missouri. We are affiliated with the National Cattlemen's Beef Association. My brothers and I own and operate a diversified grain and livestock operation in Northeast Missouri. We produce beef, pork and a variety of row crops. I am proud to be here today to discuss with you Country-of-Origin Labeling, an issue of concern to me, the members of MCA, and beef producers across the country.

Country-of-Origin Labeling passed as part of the 2002 Farm Bill. USDA is currently working to implement the law. To date, USDA personnel have attended countless meetings and producers conventions. In addition, USDA has scheduled twelve official listening across the country to discuss with producers the implications of the law and how USDA will implement the law.

Members of the Missouri Cattlemen's Association had the opportunity to hear presentations by USDA staff prior to and during our annual convention. It was at this time that our members decided that the Country of Origin Labeling law would put the financial future of the beef producer at risk by creating too much cost, paperwork and liability for producers. Our members therefore voted to support a repeal of the mandatory language in the law and to work toward developing an approach that does not burden producers with costly regulations.

Let me be clear. The Missouri Cattlemen's Associations adamantly supports the right of beef producers to market and promote our product as "Made in the USA." We are proud of the beef that we produce. We want consumers to know that we take great pride in our product and that we produce the best beef in the world. We believe that consumers are willing to pay for beef that they know is U.S. origin. We are simply disappointed that the law asks so much of beef producers. We believe that there is a better way to call attention to US beef without saddling producers with costly, burdensome laws and regulations.

Producers all want the same thing - to market and promote U.S. beef. The differences lie in the approach taken to get there. Some have argued that Country of Origin Labeling won't work if it is not mandatory. However, from what we have heard in sessions with USDA, the mandatory approach does not seem to be the answer either. Somewhere between this law and nothing,

there must be an approach that helps producers in our efforts to market beef that is born and raised in the USA without imposing additional regulations and costs.

Most producers support Country of Origin Labeling and were happy when it was included in the farm bill. You can imagine, then, their disappointment when they began to hear what implementation of the law entailed. Then, when the retailers and packers sent letters outlining the information that they will require of producers, producers became more unhappy-realizing that significant costs would be passed back to the producer. Labeling beef should not be this complicated. Unfortunately, the current country of origin labeling law is going to be a difficult program to implement because it does not capture the complexity or the reality of our industry very well.

I am aware of one labeling program that is being promoted by Carolyn Carey in California. Ms. Carey has done a tremendous amount of work on a "Beef: Born in the USA" label. She has put forth the effort to make the labeling program effective. In fact, her program has been approved by the Food Safety Inspection Service at USDA. She has had tremendous interest in her program and is currently marketing beef into the San Francisco Bay area as "Born in the USA." Based on producer participation and consumer interest, Ms. Carey's labeling program has certainly been a success. Under her program, producers and processors alike are required to keep information that guarantees the accuracy of the label. I would expect nothing less and consumers that buy the product would expect nothing less. Clearly, a labeling program that focuses on promoting US beef is possible if we work together.

I would like to know if it is possible for USDA, when they write the rules on the mandatory aspect of the law, to be more flexible. This is one area where the Agriculture Committees can be very helpful. Specifically, can USDA use more discretion in the final regulations than what is contained in the voluntary guidelines? Are there other ways to guarantee the accuracy of the information provided to packers and retailers so that producers are not negatively impacted? Does the law give USDA this flexibility? If so, in what areas? If flexibility is limited, can we work with you to change the law in a manner that helps producers promote U.S. beef without hurting the producers themselves?

Treatment of the cow-herd under this law is of tremendous concern to cow-calf producers. For example, I have cows in my herd that are 4 or 5 years old. It might be 4 or 5 years before I cull and market them. How will they be treated under this law? Is it possible to "grandfather" in this class of cattle under the law? Does USDA have the flexibility to deal with this issue?

I believe that there are better ways to devise a system that gives the retailers the information they need without putting an unnecessary burden on producers. Perhaps Carolyn Carey's approach is one of these. However, I don't know if such an approach will be acceptable under the law.

Our cattle industry has recently endured differences on this issue and people end up labeled as a proponent or as an opponent of Country of Origin Labeling. Some draw lines that say "You are with the producer," or "You are against the producer." This attitude is not helpful because it divides and polarizes and does not forge consensus. Ultimately, it does not help you, the legislator, make the decisions that will improve producers' bottom lines.

Missouri Cattlemen's Association wants to promote the beef that our members produce and proudly label it as "Product of the USA". The challenge we have is identifying a labeling system that helps us do that without putting us at risk.

I commit to working with you, your staff and all beef producers to identify changes in the law and the regulation that will help us accomplish this task.

Country of Origin Labeling Testimony To Senate Subcommittee on Marketing, Inspection, and Product Promotion

Russ Kremer
Missouri Farmers Union
April 22, 2003

I appreciate this opportunity to testify before this committee regarding the Country of Origin Labeling law, passed by Congress as a provision of the 2002 Farm Bill. My name is Russ Kremer, a diversified livestock producer and president of the Missouri Farmers Union. I believe that mandatory Country of Origin Labeling (COOL), long supported by Farmers Union and many other farm, ranch and consumer groups, is the single most important effort to help ensure the survivability and enhance economic opportunities for the U.S. independent livestock and produce farmers. We have supported mandatory country-of-origin labeling of agricultural commodities and products as a way to provide consumers with the knowledge to make more informed choices about the products they purchase and to serve as a beneficial marketing tool for U.S. producers. In the global economy, our farmers and ranchers play on an unleveled playing field. We are at a disadvantage because of the value of our dollar and are often times forced to compete with countries that produce in a system with much lower labor, environmental, and sanitation standards than our U.S. producers and processors produce under.

I am an independent producer who is very proud of what I produce. I feel that we produce this Cadillac product – a safe, wholesome product free of unnecessary chemicals and additives, processed under rigid high standards for sanitation, labor and environment. Yet, when we take this product to the marketplace, this Cadillac product is not differentiated from the lower value imported model with its uncertain assurance of quality and safety. Consumers, if given a choice, will demand our U.S. premium product and support the U.S. farmer and the U.S. worker who provide them with that quality product. Numerous studies and surveys have pointed out the overwhelming support for COOL. For example, 73% of consumers in Denver and Chicago surveyed last March by Colorado State University would be willing to pay more for beef with country of origin labeling. On average, those respondents would be willing to pay an 11% premium for country of origin labeling on steak and a 24% premium on hamburger meat. Food safety concerns, a preference for labeling source and origin information, a strong desire to support U.S. producers, and beliefs that U.S. beef was of higher quality were the most common reasons consumers preferred buying beef with a country of origin label.

We're very disappointed in the vast amount of misinformation about Country of Origin Labeling that has been disseminated recently in an apparent attempt to derail the sensible and timely implementation of this law and even to attempt to repeal the law. Some groups insist that we should have a voluntary law. We have had voluntary provisions for 30 years with minimal participation and little effect. Advocating voluntary country of origin labeling is advocating no labeling at all.

COOL is a good measure, the intent is clear, and it can be implemented with little burden to producers at a minimal cost. The law specifically states that the burden of proof or mandatory identification system be not imposed on our independent producers who proudly operate their U.S. family farms where their animals are born and raised or where there fruits and vegetables are grown. The law spells out that these producers shall not be saddled with expensive and burdensome audit trails or third party verification. Rather the burden of proof is on those that import. It is not a state of origin law, a farm of origin law or a pen of origin law- it's a country of origin law.

Mandatory Country of Origin Labeling can be implemented in a practical, "farmer- and rancher-friendly" manner and without creating costly regulatory burdens on producers or other food product sectors. To the extent existing record-keeping systems and import information can be utilized and tailored to meet the COOL requirements for consumer notification, the less costly and more efficient the labeling system will be for all parties. The most practical and effective means of verifying the country of origin is to accurately identify the produce, meat and animals that come into this country and to strongly enforce the verification and traceability of those products. The vast majority of U.S. livestock and crop producers do not import any livestock or crop products that would subject their operations to foreign origin verification. If import labeling procedures are strictly enforced, then all other products could be presumed U.S. produced thus preventing burdensome record keeping and verification procedures imposed on those producers who choose to continue a 'domestic only' production system. Programs such as the School Lunch Program currently operate under similar procedures.

Farmers and ranchers who do market imported products should have an appropriate record-keeping system. Existing identification programs, such as health certificates from the USDA Animal and Plant Health Inspection Service or import information gathered by the U.S. Customs Service, can be coordinated and used to identify the country-of-origin for imported commodities.

We also suggest that USDA consider the following when writing the rules for mandatory COOL:

1. USDA should establish a "grandfather" clause that will allow all livestock presently in the United States to be considered products of the U.S.
2. USDA must ensure that retailers cannot impose a greater burden on suppliers than is required by the law or the rules. USDA can accomplish this by stating that only USDA may conduct audits, and all suppliers and retailers must rely solely on the markings on livestock or the representations made on sales transaction documents.
3. USDA should interpret the law to maximize the number of commodities that will be labeled. For example, enhancing a commodity by adding water, flavoring, salt, or other seasoning should not exclude a commodity from the labeling requirements. Also cooking, curing, roasting, or restructuring should not exclude a commodity from the labeling requirements.

I am excited about the potential benefits of a successfully implemented COOL law. I believe that stronger farmer-consumer relationships will be forged. Consumers will support our US farm families and demand and choose our quality products. Family farm operations will become more profitable and the consumer will be assured safe, wholesome food. It's a win-win situation.

Congress required USDA to implement mandatory country of origin labeling by September 30, 2004. The USDA just began working on mandatory labeling on April 9, 2003, the date the comment period for the voluntary program ended. Below are Guidelines we want USDA to follow when writing its rules for mandatory labeling. These Guidelines will ensure that COOL is implemented in a least-cost, least-burdensome manner, while maximizing benefits for producers and consumers and minimizing the burden on packers, processors, and retailers.

4. **USDA should require all imported livestock to be permanently marked with a brand or tattoo indicating its country of origin before it enters the United States.**
    a. All livestock not marked with a foreign brand or tattoo should be considered born and raised in the USA.
    b. There would be no need for mandatory recordkeeping for livestock producers because the origins of livestock can be determined by whether or not an animal has a foreign marking.
    c. If producers want to claim that foreign livestock were fed in the United States, they should be allowed to voluntarily keep records to substantiate their claim.

5. **USDA should establish a "grandfather" clause that will allow all livestock presently in the United States to be cleared from the system without affecting their value.**
    a. This can be accomplished by simply using Guideline 1 above as the single means of identifying origin of livestock.

6. **USDA must ensure that retailers cannot impose a greater burden on suppliers than is required by the law or the rules.**
    a. Retailers and packers have already signaled their intent to put a greater burden on suppliers than is required by the COOL law. For example, some packers are demanding the producers obtain a third-party certification of origin.
    b. USDA can accomplish this by stating that only USDA may conduct audits, and all suppliers and retailers must rely solely on the markings on livestock or the representations made on sales transaction documents.

7. **USDA should utilize existing paperwork transactions already used between packers, processors, and retailers to add a country of origin designation.**
    a. As a service to the industry, USDA could develop standardized forms for use where no pre-existing documents are adaptable.

8. **USDA should interpret the law to maximize the number of commodities that will be labeled.**
    a. Enhancing a commodity by adding water, flavoring, salt, or other seasoning should not exclude a commodity from the labeling requirements.

b. Cooking, curing, roasting, or restructuring should not exclude a commodity from the labeling requirements.

Note: This document was prepared by R-CALF USA and is consistent with R-CALF USA's formal comments submitted to USDA. R-CALF USA is currently having its legal advisors research how these proposals might be affected by both trade law and domestic law. Updates will be provided as R-CALF USA continues to develop the cattle industry's best approach to labeling.

STATEMENT OF
THE MISSOURI FARM BUREAU FEDERATION
TO THE
MARKETING, INSPECTION AND PRODUCT PROMOTION SUBCOMMITTEE
SENATE COMMITTEE ON AGRICULTURE, NUTRITION AND FORESTRY
REGARDING COUNTRY OF ORIGIN LABELING

Good morning. My name is David Day. I am a cattle producer from south central Missouri and serve on the Missouri Farm Bureau State Board of Directors. Missouri Farm Bureau is the state's largest general farm organization with over 99,000 members. In addition, our organization is a part of the American Farm Bureau Federation, which represents a majority of the nation's livestock producers.

We welcome the Subcommittee to Missouri and appreciate the opportunity to comment on country of origin labeling. Senator Talent, thank you for your continued interest and leadership on this issue.

Farm Bureau supports mandatory country of origin labeling. Many farmers and ranchers feel that the products they grow in the United States should be labeled as a product of the United States at the retail level. Today, more and more products are being imported into the United States giving our consumers greater choices at the marketplace. However, by and large people know little about where these products originated. By including country of origin labeling in the 2002 Farm Bill, we believe Congress intended to provide a program that would help consumers make informed decisions when purchasing products at the retail level and help producers receive a value-added return on their agricultural products.

While our organization supports country of origin labeling, we are concerned about the impact unintended consequences could have on our state's livestock producers. USDA has done an admirable job of developing rules for the voluntary program and we applaud their willingness to seek input from those the regulations will affect.

Currently, many producers have misconceptions about country of origin labeling because they have not received adequate information to determine how the program will affect their operations. In addition, under the current USDA guidelines for voluntary labeling, we are uncertain of the benefits or costs associated with the program. It is crucial that USDA develop a program that does not hinder producers with burdensome regulations or significantly increase their production costs.

In labeling products as to the country of origin, we have several concerns about how covered commodities will be traced from the farm level to the retail level. First, we strongly believe that the statute prohibits USDA from instituting the proposed recordkeeping requirement. The statute clearly states, "The Secretary shall not use a mandatory identification system to verify the country of origin of a covered commodity." Nevertheless, the Agricultural Marketing Service (AMS) proposes that each producer and others in the supply chain keep a record of every covered commodity for at least two years. The proposed rule also mandates that these records be available for inspection by AMS to verify that each animal, or covered commodity, is of the

origin claimed. The only possible way to accomplish such a recordkeeping requirement would be to have every animal identified. This is requiring a mandatory identification system, which is specifically prohibited by the statute.

Second, we believe any recordkeeping requirement must be uniform in nature. Since AMS does not outline a uniform recordkeeping system, each retailer may implement a system that differs from others. As a result, producers may lose market opportunities as they could be forced to select which supply chain to enter. We believe there should be some degree of uniformity to insure all market opportunities are maintained for producers.

Finally, producers will not be prepared to meet mandatory guidelines in September 2004 because older animals will not be documented for country of origin. Once outstanding questions about the program are resolved, we strongly recommend USDA implement a transition period as the voluntary guidelines become mandatory to prevent producers from being negatively impacted. In addition, we believe all members of the supply chain must be actively involved in developing the final program rules.

Again, we commend the subcommittee for holding this hearing and appreciate the opportunity to comment.

MISSOURI FARM BUREAU FEDERATION
P.O. Box 658, 701 South Country Club Drive, Jefferson City, MO 65102 / (573) 893-1400

April 9, 2003

Country of Origin Labeling Program
Agricultural Marketing Service (AMS)
United States Department of Agriculture
Stop 0249, Room 2092-S
1400 Independence Avenue, SW
Washington, D.C. 20250-0249

RE: Docket Number LS-02-13, Establishment of Guidelines for the Interim Voluntary Country of Origin Labeling Program

To Whom It May Concern:

On behalf of Missouri Farm Bureau, the state's largest general farm organization, we submit the following comments in regard to the interim voluntary country of origin labeling (COOL) program guidelines.

Missouri Farm Bureau policy states, "We believe that all food products should be clearly labeled at the retail level in order to identify ingredients, amounts contained and the country of origin." While our organization supports COOL, to prevent unintended consequences, we strongly believe USDA must address several issues of concern in developing and implementing the guidelines for the program.

In general, we are concerned about the impact COOL will have on our state's livestock producers. Missouri is one of the leading states in livestock production. In fact, six percent of all U.S. cattle operations are found in our state. Missouri ranks second in the number of beef cow operations as well as beef cows and calves. According to the Missouri Agricultural Statistics Service (MASS), meat animal production contributed $1.5 billion to our state's economy in 2001.

Considering the economic significance of Missouri's livestock industry, it is crucial that USDA develop a program that does not hinder producers with burdensome regulations or significantly increase their production costs. By including COOL in the 2002 Farm Bill, we believe Congress intended to provide a program that would 1) help consumers make informed decisions when purchasing products at the retail level and 2) help producers receive a value-added return on their agricultural products. Under the current USDA guidelines for voluntary COOL, we are uncertain of the benefits or costs associated with the program.

As stated in the statute, "The Secretary may require that any person that prepares, stores, handles, or distributes a covered commodity for retail sale maintain a verifiable record keeping audit trail..." In addition, all parties involved in the supply chain must keep a record of every covered commodity for at least two years for auditing purposes. Ultimately, retailers will help drive the program because they are charged with labeling covered commodities at the retail level

as to the country of origin. All other members of the supply chain are responsible for providing the appropriate documentation required by USDA and retailers.

In labeling products as to the country of origin, we have several concerns about how covered commodities will be traced from the farm level to the retail level. First, we strongly believe that the statute prohibits the Department from instituting the proposed recordkeeping requirement. The statute clearly states, "The Secretary shall not use a mandatory identification system to verify the country of origin of a covered commodity." Nevertheless, AMS proposes that each producer keep a record of every covered commodity for at least two years. The proposed rule also mandates that these records be available for inspection by AMS to verify that each animal, or covered commodity, is of the origin claimed. The only possible way to accomplish such a recordkeeping requirement would be to have every animal identified. This is requiring a mandatory identification system, which is specifically prohibited by the statute. However, any recordkeeping requirement must be uniform in nature.

Second, since AMS does not outline a uniform recordkeeping system, each retailer may implement a system that differs from others. As a result, producers may lose market opportunities as they could be forced to select which supply chain to enter. We believe there should be some degree of uniformity to insure all market opportunities are maintained for producers.

Finally, producers will not be prepared to meet mandatory COOL guidelines in September 2004 because older animals will not be documented for country of origin. Once outstanding questions about the program are resolved, we strongly recommend USDA implement a transition period as the voluntary guidelines become mandatory to prevent producers from being negatively impacted. Currently, producers have not received adequate information to understand how COOL record keeping requirements will affect their livestock operations. In addition, we are not aware of retailers implementing the voluntary guidelines.

We commend USDA for organizing COOL listening and education sessions across the nation over the next two months. As there are many producers that have misconceptions about COOL, it is crucial that they understand how the program will impact their operations. In addition, we believe all members of the supply chain must be actively involved in developing the final program rules. Finally, we feel there is a need to better understand the implementation costs to determine the long term impacts of country of origin labeling.

We appreciate the opportunity to comment on the interim voluntary country of origin labeling guidelines and look forward to providing additional input in the future.

Sincerely,

Charles E. Kruse

Charles E. Kruse
President

DOCUMENTS SUBMITTED FOR THE RECORD

APRIL 22, 2003

STATEMENT OF THE HONORABLE SENATOR TIM JOHNSON

FIELD HEARING BEFORE THE SENATE AGRICULTURE, NUTRITION AND FORESTRY SUBCOMMITTEE ON MARKETING, INSPECTION AND PRODUCTION PROMOTION

COUNTRY OF ORIGIN LABELING

APRIL 22, 2003

Thank you, Chairman Talent and Senator Baucus, for the holding today's hearing. I welcome the opportunity to submit official testimony at this important field hearing on country-of-origin labeling. As the original author of this important new law, I believe it is vital for a balanced and fair discussion take place.

As the U.S. Department of Agriculture (USDA) begins promulgating mandatory labeling guidelines, I believe all interested parties need to remain vigilant to ensure the law is implemented as directed and intended by Congress. Nearly one year ago, President Bush signed mandatory country of origin labeling into law, therefore providing American consumers the opportunity to make informed decisions at the retail level about where their meats, fish, produce, and peanuts originate. Under present law, most products, such as clothing and electronics, require labeling according to their country of origin if they are produced outside of the United States. Finally, the consumer will be able to distinguish between the domestically and foreign-produced food they feed their families.

Unfortunately, since passage of mandatory labeling, opponents have been drowning the public with misinformation and half truths about the law. It is only democratic to have two opposing views on public policy; however, it is irresponsible and reckless to intentionally mislead producers and the public as to what requirements will be set and the outcome of such requirements. Hearings, such as the one today, provide a welcome opportunity to accurately inform the public and producers of what is allowed under the law and what is prohibited.

Recently, nine of my Senate colleagues joined me in submitting comments concerning USDA's voluntary guidelines and our bipartisan ideas for correct implementation. These comments included requiring records only on foreign animals in an effort to reduce costs, modeling the new labeling law after current labeling programs to reduce paperwork, and allowing for self-certification as opposed to third-party certification.

It is unnecessary for USDA to devise a completely new record keeping system specifically for country of origin labeling, since there are proven programs already in existence within the department and industry to verify the country-of-origin or birth of animals. The quality grade certification system, existing voluntary country-of-origin labeling program for beef, "Certified Angus Beef," and similar programs that USDA implements to aid industry in promoting certain cuts of meat, all require that a trail of

information accompany the product until its final destination. Furthermore, the National School Lunch Program, Hazard Analysis and Critical Control Point regulations, and the Market Access Program are all successful programs in place that require tracking or verification of certain desired traits, including country-of-origin.

I was shocked and disappointed to learn USDA had consulted with three very vocal opponents of mandatory labeling in determining an estimated cost burden analysis. The $2 billion price tag attached to labeling by USDA is a worst-case scenario estimate, which unnecessarily exaggerated the true costs associated with this program. In response to this one-sided estimate, I have requested the nonpartisan Government Accounting Office to investigate whether USDA's cost estimates are accurate or exaggerated. I anticipate economic reports to be released soon that will indicate the cost is likely to be closer to $300-$500 million.

I believe it is important to point out that in estimating the cost burden, USDA assumed that each and every one of the two million farmers, ranchers, and fishermen in the U.S. would be forced to implement a record keeping system. Not only did this erroneous assumption arbitrarily increase the cost estimate, but every agricultural producer in the U.S. does not produce a commodity that will be required to be labeled under mandatory country-of-origin labeling.

I think it is most important for producers to understand that on-farm mandatory animal identification or inspection is specifically prohibited under this law. Producers already keep a multitude of documentation, ranging from birthing and health records to feed and sales receipts, which should be deemed sufficient by USDA in proving country-of-origin.

Finally, I would like to highlight a survey recently released from Colorado State University that confirms consumers are willing to pay a premium for U.S. labeled meat products. Specifically, the survey reported that seventy-three percent of the participating consumers were willing to pay a twenty-four percent premium for U.S. labeled hamburger and an eleven percent premium for steak bearing a U.S. label. The survey also reported that seventy-five percent of the participating consumers prefer mandatory country-of-origin labeling for beef.

As USDA moves forward in drafting guidelines for mandatory labeling, it is important to keep in mind that the law does not go into effect until September 2004. There is plenty of time to get this done right.

I thank the Chairman for this opportunity. It is my hope that producers, consumers and the general public will begin to understand the truths of this law after today's hearing and further public discussions.

Testimony of
J. Patrick Boyle
President & CEO
American Meat Institute
Before the
Subcommittee on Marketing, Inspection and Production Promotion,
Senate Committee on Agriculture, Nutrition and Forestry
April 22, 2003

Good morning. I am J. Patrick Boyle, President & CEO at the American Meat Institute (AMI), the nation's oldest and largest meat industry trade association. AMI represents packers and processors of about 90 percent of the beef, pork, lamb, veal and turkey produced in the U.S. About two-thirds of these companies are small businesses with fewer than 100 employees. The remaining third are mid-to-large firms, including some major international food processing companies.

AMI has long-standing policy opposing mandatory country-of-origin-labeling (COL) for meat and poultry products. During consideration of the 2000 Farm Bill, we opposed mandatory COL for meat products and were successful in helping to defeat amendments offered during the House Agriculture Committee mark up of the bill. When mandatory COL was passed on the House floor during Farm Bill consideration, meat products were exempt from the bill. During Conference Committee deliberations between the House and Senate, the House voted unanimously, twice, against the mandatory COL provisions for meat products included in the Senate passed bill.

During my tenure at AMI, I have yet to hear an argument from proponents of mandatory COL that makes sense for the producer, packer/processor, retailer or for the consumer. Proponents of mandatory COL initially argued that concerns about food safety was reason enough to impose mandatory COL. When it was established that meat products coming from country's eligible to ship product into the U.S. were inspected under a food safety system equivalent to U.S. standards; reviewed annually by USDA food safety experts; subject to reinspection at the port of entry; and, ultimately, inspected by USDA inspectors in federally inspected meat plants -- that argument subsided. The argument is even more fallacious when one considers that mandatory COL will apply not only to imported meat, but also to the meat from animals slaughtered in USDA inspected plants in this country. Many of those animals are born in Mexico or Canada, often raised in the United States, and all of those animals are subject to the very same inspection system as animals born, raised, and slaughtered in the U.S. When the same USDA inspector looks at both animals, the illogic of the COL proponents' food safety argument becomes readily apparent.

Then we heard proponents argue that mandatory COL was a consumer-right-to-know issue. In fact, it was the consumer-right-to-know premise that led to mandatory COL's inclusion in the 2002 Farm Bill. However, this argument too rings hollow. Mandatory COL is required for a select group of commodities (red meat, fruits and vegetables, peanuts and fish) and not all commodities. Equally troubling, mandatory COL only applies to certain product lines within

those commodity groups -- for instance, not all red meat products, fish products or peanut products are required to be labeled, just some of them. This suggests a level of fickleness among consumers beyond comprehension!

Perhaps the greatest flaw in the consumer-right-to-know logic is that the law applies to covered commodities sold in retail establishments but the same commodities sold in restaurants are exempt from mandatory labeling. So, what does this mean? A consumer has the right-to-know where their hamburger, lettuce and tomato come from when they purchase it from the grocery store, but they do not have that same right when they purchase it from a diner or restaurant. It is ironic that proponents assert that the consumer has a right to know the country-of-origin regarding the hamburger he or she purchases at a retail store, but does not have the same right regarding the hamburger they ate at a restaurant just before going grocery shopping – even though both hamburgers could have come from the same animal. Where's the logic?

Lately, we have heard from some producer segments that mandatory COL for meat products will lead to increased profits for red meat sales. They claim that consumers are willing to pay more for products with a "Made in the U.S.A." or "Product of the U.S.A." label. For the sake of argument, let us suppose that to be true. Let us also suppose that such a labeling regime will lead to an increase of 1-cent, 5-cents or 25-cents per pound. If so, we should also assume that the USDA cost estimate for implementing mandatory COL will cost $1 billion in paperwork alone. Indeed, AMI's conservative estimates of the capital costs alone for the approximately 120 largest cattle and hog slaughter facilities are about $2.4 billion. Those costs are in addition to the substantial annual costs of implementing such a labeling system.

Now, the following questions must be answered: if increased revenue is realized by retailers for meat products bearing mandatory COL, will that revenue off-set the cost of mandatory COL that retailers and packer/processors will incur? If the answer is no, producers are not likely to realize additional revenue to offset their cost of implementing mandatory COL. Even if the answer is yes, and I do not believe there is evidence to support that answer, how much of the "profit," if any, will "trickle down" to producers?

There is simply no credible data or evidence available to suggest that the cost of implementing mandatory COL will offset, much less exceed, those costs.

Let me also briefly comment on another problem. The law imposes the responsibility for accurate labeling, and provides for civil penalties for errors in such labeling, on the retailer and those in the distribution chain who supply covered commodities to the retailer. In the livestock and meat industry the only people who can provide accurate information as to the country of origin of livestock are livestock producers – not the packer and not the retailer. Yet, some producers deny their accountability and seek to shirk that responsibility, asserting that they should be able just to declare the country of origin of their livestock. Packers and those up the chain must, however, be able to rely on something more because it is the packer, the wholesaler, the retailers and others in the chain who will bear the brunt of the regulatory burden if the producer's information is wrong, either through negligence or fraud.

The issue of COL is complex in that its proponents see it as a means to a variety of ends. For some, it is a means to limit competing imports. Frustrated by Canadian or Mexican imports, some see such labeling as a way to discriminate against other North American agricultural products and thereby improve the position of U.S. products in the U.S. marketplace. For others, COL is a way to promote U.S. products to consumers. If Americans only knew how to choose U.S. products, they reason, then they would prefer to purchase those products and help American agriculture in the process.

AMI shares the goal of those who seek to promote U.S. products, but we oppose the goal of those who seek to discriminate against imported products. In our view, mandatory COL will create untenable barriers to imported meats, damage our ability to export U.S. meats and mandate significant new costs throughout our industry.

There is, however, another approach that we continue to believe is responsive to the desire to provide country-of-origin labeled meat in the marketplace without creating an expensive, administratively burdensome, protectionist mandate. That approach is a voluntary U.S. meat certification program.

As you may know, Mr. Chairman, AMI joined the National Meat Association, Food Marketing Institute, American Farm Bureau Federation and National Cattlemen's Beef Association in petitioning USDA one year ago for a new, voluntary, U.S. beef certification program. This program would be administered by the Agricultural Marketing Service and would be available to anyone in the beef packing business, for a fee, to provide certified U.S. beef. Importantly, the livestock used for this voluntary program would be subject to an animal identification program to ensure that they, too, meet the standards to be certified U.S. beef under the terms of the program. Under this system, the market would provide for what COL proponents profess to be the case – that the American consumer will prefer and pay more for meat products from animals born and raised in the United States. Under this program, those that believe that to be true could enter the market with those products and if the benefits outweigh the costs, succeed.

Thank you for this opportunity to testify.

Senator Talent I am Lowell Schachtsiek from Palmyra Missouri. Our Family raises hogs, cattle, corn, soybeans, and wheat. I would like to thank you for the opportunity to testify in favor of Country of Origin Labeling.

The economy in rural America is in serious trouble and it could be considered third world. Most of the capital is concentrated in fewer hands and we as commodity producers are not able to control the prices that we receive or for the most part are not able to control our input costs. When prices are low we must keep producing and now with our forced commitment to free trade we are not only in competition with fellow farmers, but are competing against cheap labor in third world countries.

In the eighties American agriculture was considered by most to be in crisis, but our operation made money in the eighties and is only breaking even at best at present. The price of grain compared with inflation is at record lows and hogs have been profitable in one out of the last four years.

As far as I know there has never been a general study and general discussion questioning if the free market and unlimited imports benefit anyone in this country except those companies involved in importing and exporting. It seems that common sense should tell us that something is wrong when we keep running record deficits and export jobs out of this country.

The passage of COOL as part of the 2002 Farm Bill was a surprise to me as I didn't think that the meat industry would allow it to happen.

Consumers want to know in what country their meat is raised and packers want consumers to think the meat they eat is from animals born and raised in this country, when in many cases it is imported. The meat that we raise in this country is considered the safest and best quality meat in the world, and I think it unfair for the meat industry to use it for a cover for inferior imported meat.

The meat industry would like for producers and congress to believe that the implementation of the law would be to costly. As you know the department of Agriculture came out with figures that stated that it would cost the producers two billion if COOL was implemented. When questioned about their facts it was discovered that their figures and assumptions were seriously flawed and the financial benefits of COOL were not even considered.

In talking with one livestock buyer he stated that it is obvious that when COOL is implemented the price of domestic meat will go up. This in return will raise slaughter cow prices, because the homemaker will not buy hamburger from Mexico, Australia or some South American country.

It should be a simple matter to tattoo imported animals and the rest of animals should be considered domestic. COOL is the first ray of hope that I have had in Livestock production for some time.

Lowell Schachtsiek
6938 County Road 249
Palmyra Mo. 63461
573-735-4159

STATEMENT
Of
RICHARD CASEY

Submitted On Behalf of the
NATIONAL GROCERS ASSOCIATION
MISSOURI GROCERS ASSOCIATION

Before the

SENATE COMMITTEE
ON AGRICULTURE, NUTRITION AND FORESTRY

SUBCOMMITTEE ON MARKETING, INSPECTION, AND PRODUCT PROMOTION

Field Hearing on Country of Origin Labeling
April 22, 2003
Joplin, Missouri

I am Richard Casey, President of CNW Foods, which operates two Food 4 Less supermarkets in Missouri. In addition, I am a member of the Boards of Directors of both the Missouri Grocers Association (MGA) and the National Grocers Association (N.G.A.), and Chairman of the Ozark Empire Grocers Association. I welcome the opportunity to present this statement on behalf of both MGA and N.G.A. to express our strong opposition to the Country of Origin Labeling (COOL) program. I would like to commend Chairman Talent for his support for small business, and for holding this hearing to call attention to this issue of vital importance to our nation's independent, community-focused retail grocers and their wholesalers. This issue will affect not only the grocery industry, but workers and their communities nationwide, because of the extreme stress on small businesses caused by these cumbersome and unnecessary rules.

In February, I attended a meeting of N.G.A.'s Government Relations Leadership Council, which included a briefing on the COOL guidelines from one of the top officials with AMS. It was clear then and it remains clear now that it will be a practical impossibility for a small retail grocer to comply with these voluntary guidelines or the mandatory regulations. The COOL program is fundamentally anti-small business. Furthermore, no funding has been given to the states to enforce this program. It is clear that underfunded state law enforcement agencies will use the COOL program as a revenue-enhancing tool, doling out citations for the odd lot of mislabeled bananas or some other item in order to keep their funding rolling in.

I am attaching to this statement a copy of N.G.A.'s comments submitted recently to the Agricultural Marketing Service regarding the voluntary COOL guidelines, and ask that these be made part of the hearing record. I urge the Subcommittee to closely examine this legislation and see how unfair and burdensome it is to independent retail grocers and their

wholesalers, and that this legislation, in fact, will not enhance food safety. I urge Congress to repeal this legislation and voluntary guidelines. Since AMS is expected to begin work on a mandatory COOL program, with a target implementation date of September 30, 2004, time is of the essence. I urge the Subcommittee to consider the following points:

- The voluntary guidelines provide a framework for a system that will **shift costs and burdens to retailers that will be reflected in consumer prices, while providing no increase in food safety.**

- **The COOL requirements would hold retailers accountable for maintaining a verifiable audit trail for individual items** – back to where an animal was born or a plant picked. Producers and suppliers should be responsible for verifying and certifying the country of origin.

- The COOL recordkeeping requirement would **force retailers to keep two-years worth of records at the point of sale on every covered product -- fresh and frozen muscle cuts of beef, veal, lamb, pork and fish, fresh and frozen fruits and vegetables, and peanuts — that indicate their country of origin.**

- **USDA has drastically underestimated the cost burden that the recordkeeping alone would place on retailers and wholesalers** -- AMS estimated the cost at $628 million per year for retailers and $340 million for wholesalers, for the first year alone. Even that is too low, and doesn't include costs for such things as printing and applying labels, changes to computer systems, etc. And another $1 billion for the rest of the industry.

- **The entire COOL program is fundamentally anti-small business** – independent retailers and wholesalers will face disproportionately higher compliance costs compared to their larger competitors. This is not to say that the unfairness of this regulation is any less for larger competitors, just that it has been long recognized that small business has less resources and must incur proportionally more costs to comply.

- **The entire COOL program is fundamentally flawed, revealing itself to be not about food safety at all.** If it were about ensuring a more safe food supply, why are restaurants not covered? Why are beef, lamb and pork covered but not chicken or turkey? **In fact, what really drove this was domestic agricultural producers seeking to discredit their foreign competitors and using fears of terrorist activity to their own advantage – and leaving independent retailers and wholesalers, as well as consumers, to foot the bill.**

Once again, I urge the Subcommittee to take action to repeal this legislation. Both the MGA and N.G.A. stand ready to assist the Subcommittee in any way they can.

STATEMENT
Of The
NATIONAL GROCERS ASSOCIATION

Before the

SENATE COMMITTEE
ON AGRICULTURE, NUTRITION AND FORESTRY

SUBCOMMITTEE ON MARKETING, INSPECTION, AND PRODUCT PROMOTION

Field Hearing on Country of Origin Labeling
April 22, 2003
Joplin, Missouri

The National Grocers Association (N.G.A.) appreciates the opportunity to express its opposition to the United States Department of Agriculture (USDA) Agricultural Marketing Service's (AMS) interim voluntary guidelines for the country of origin labeling of beef, lamb, pork, fish, perishable agricultural commodities, and peanuts under the Agricultural Marketing Act of 1946.

N.G.A. is the national trade association that represents exclusively the interests of independent community-focused grocery retailers and wholesalers. An independent, community-focused retailer is a privately owned or controlled food retail company operating in a variety of formats. Most independent operators are serviced by wholesale distributors, while others may be partially or fully self-distributing. A few are publicly traded, but with controlling shares held by the family and others are employee owned. Independents are the true "entrepreneurs" of the grocery industry and dedicated to their customers, associates, and communities.

N.G.A.'s position is summarized in the attached comments filed recently with AMS. N.G.A. respectfully urges the Subcommittee to include the statements in the record and to closely examine this legislation and see how unfair and burdensome it is to independent retail grocers and their wholesalers, and that this legislation, in fact, will not enhance food safety. We urge Congress to repeal this legislation.

Submitted by:

Thomas F. Wenning
Senior Vice President and General Counsel
National Grocers Association

NGA
National Grocers Association

April 9, 2003

Country of Origin Labeling Program
Agricultural Marketing Service
USDA STOP 0249, Room 2092-S
1400 Independence Avenue, SW
Washington, DC 20250-0249

RE: Notice of request for public comments; 67 Fed. Reg. 63367, October 11, 2002. Establishment of Guidelines for the Interim Voluntary Country of Origin Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts under the Authority of the Agricultural Marketing Act of 1946.

Dear Sirs:

The National Grocers Association (N.G.A.) takes this opportunity to express its opposition to the United States Department of Agriculture (USDA) Agricultural Marketing Service's (AMS) interim voluntary guidelines for the country of origin labeling of beef, lamb, pork, fish, perishable agricultural commodities, and peanuts under the Agricultural Marketing Act of 1946.

N.G.A. is the national trade association that represents exclusively the interests of independent community-focused grocery retailers and wholesalers. An independent, community-focused retailer is a privately owned or controlled food retail company operating in a variety of formats. Most independent operators are serviced by wholesale distributors, while others may be partially or fully self-distributing. A few are publicly traded, but with controlling shares held by the family and others are employee owned. Independents are the true "entrepreneurs" of the grocery industry and dedicated to their customers, associates, and communities.

N.G.A. appreciates the openness and responsiveness of USDA representatives who tried to explain the country of origin law and guidelines, especially at our February convention in Las Vegas, Nevada with retail and wholesale members of the N.G.A. Government Relations Leadership Council. N.G.A. and its members will continue to provide information at the upcoming USDA listening sessions.

These comments address the adverse effects, unnecessary costs and burdens that would be imposed by USDA's interim voluntary guidelines, especially as USDA has indicated they will serve as the foundation for mandatory regulations that are currently scheduled to take effect on September 30, 2004. N.G.A.'s comments contained herein, that address the costs and burdens imposed by the voluntary

guidelines should not be interpreted as lessening N.G.A.'s strong support for repeal of mandatory country of origin labeling contained in Public Law 107-171 and its replacement with a workable voluntary industry program. This mandate is the result of some domestic agricultural producers seeking a marketing preference over foreign competitors to the detriment of community-focused retailers, wholesalers, producers, and consumers who will ultimately pay the bill for products they have grown accustomed to securing easily and very affordably.

If country of origin labeling were really a food safety issue, its scope would clearly encompass more than the supermarket industry. Why were "food service" products, and their distributors, and their retail outlets excluded? By definition, this means that all hospitals, school lunch rooms, retirement homes, hotels, motels, restaurants, and the military that have eating facilities are totally excluded from this law. This also means that they are able to bring in to their distribution network, any products sourced from any location and it can be served in those establishments without a Country of Origin notification, labeling, or other required information provided to consumers. This illustrates that the guidelines and mandatory country of origin labeling are not a food safety issue, but an attempt to affect some supplier market preference. N.G.A. strongly believes the food industry, neither grocery nor food service, should be subjected to this costly and unnecessary mandate.

The grocery industry has a long, consistent record of working with federal agencies to recall products for any perceived food safety reasons. With today's high technology and instant communications capability, and in coordination and cooperation with federal and state agencies, retailers and wholesalers throughout America are able to rapidly recall products for any reason. This is routinely done and efficiently done when there is a "factual determination" by FDA, USDA or the industry that recall food products is necessary. In fact, N.G.A. and others have supported greater food and drug administrative resources for food import inspections to enhance our nation's food safety and security.

Summary of the Law

Public Law 107-171 through its matrix of complex requirements places onerous and unnecessary burdens on the entire grocery industry by mandating that retailers of a covered commodity inform consumers of the product's country of origin at the point of final sale. Further, any person who supplies those products to a retailer "shall provide information to the retailer indicating the country of origin." The Secretary may require any person who prepares, stores, or distributes a covered commodity for retail sale to maintain "a verifiable recordkeeping audit trail" to verify compliance.

A covered commodity includes muscle cuts of beef, lamb, and pork; ground beef, ground lamb, and ground pork; farm-raised (shellfish and fillets, steaks, nuggets, and any other flesh from farm-raised fish or shellfish) and wild fish (naturally-born or hatchery-raised fish and shellfish harvested in the wild); a perishable agricultural commodity (fresh and frozen fruits and vegetables); and peanuts.

As so often is the case, the devil is in the details and that is certainly the case in the law's definitions of covered products and qualifications for United States Country of Origin. The difference between a product being able to claim a United States country of origin label and a foreign country label is equally complex and demanding for industry compliance. Beef must be exclusively from an animal born raised and slaughtered in the United States, but may include animals born and raised in Alaska or Hawaii and transported for a period not exceed 60 days through Canada to the United States where it must be slaughtered. Lamb and pork products must be from animals that are exclusively born, raised and slaughtered in the United States. Fresh and frozen fruits and vegetables and peanuts must be exclusively produced in the United States

Furthermore, fish product labels must not only contain the country of origin, but also disclose on the label whether it is farm raised or wild. To carry a United States country of origin label, wild fish must be harvested in waters of the United States, a U.S. territory's or State's waters. In addition, it must be processed in the United States, or a U.S. territory or State. Farm raised fish has to be hatched, raised, harvested, and processed in the United States.

Retailers subject to the law are only those in the grocery industry with annual invoice costs for fresh fruits and vegetables in excess of $230,000. Retailers have to provide country of origin information to consumers at the final point of sale by a label, stamp, mark, placard, or other clear or visible sign on the product or on the package, display, holding unit, or product bin. Food service establishments-such as restaurants, bars, food stands, and similar facilities- that sell the covered commodities are exempt from the law, even though the same U.S. and foreign products that other retailers are required to provide the country of origin information will be sold to consumers.

Penalties also apply to the entire grocery industry. Retailers are subject to fines of up to $10,000 per violation, after the Secretary finds a willful violation and provides a 30 day notice of violation for the retailer to comply and also a hearing. Other members of the grocery industry are subject penalties up to $10,000 per violation.

Guidelines Disclose the Unnecessary and Costly Burdens of the Law

The voluntary guidelines issued by USDA clearly illustrate the adverse consequences and costs that will be imposed on retailers and the rest of the grocery industry to provide country of origin labeling. While the retailers have the burden to provide the information to consumers, USDA has correctly made clear that "suppliers are required to provide information to retailers indicating the country of origin of the covered commodity." This requirement, along with the one that requires the retailer to have a verifiable audit trail, or has already caused retailers and their wholesalers to correctly demand future compliance from suppliers up the food chain-processors, shippers, and growers/farmers/fishermen. Contractual and penalty indemnifications will be required as well. These contractual and purchasing paperwork requirements will flow upstream and paperwork with country of origin information in order for every covered product to comply, like shipping documents,

invoices and labels, will flow downstream. With the millions of transactions affected, this creates a paperwork nightmare, which the law and guidelines dump in the retailers' and industry's lap.

N.G.A. recently surveyed grocery retailers and wholesalers on the effects of USDA's voluntary guidelines for country of origin labeling. The survey covered more than 8,000 stores, and the results illustrate the steps retailers and wholesalers will have to take with suppliers to assure compliance with the voluntary guidelines and **the mandatory country of origin labeling requirements scheduled to take effect Sept. 30, 2004.**

Survey respondents were asked to rank a series of steps that could be taken in response to the labeling requirements. **The first step, or the most immediate action** respondents said they would take, would be to require producers and suppliers of covered commodities to label individual products. **Next,** retailers and wholesalers said they would require their producers and suppliers to provide contractual verification of country of origin labeling. This is because USDA is requiring that the industry establish a verifiable audit trail of the country of origin from farmer/producer to retailers.

The third step respondents said they would take was to label or post signs at the point of sale for those products not labeled by producers, such as fruits and vegetables. **The fourth step** would be to no longer carry products that producers do not provide country of origin labeling on the product. **Finally, the fifth and last resort** action that respondents said they would reluctantly consider is to move to case-ready meat. Importantly, many respondents expressed that their customers value the ability to order custom cuts of meat and that it is a valued point of differentiation for independent retailers in the marketplace, making a move to all case-ready meat is an unattractive option, and cause elimination of jobs for meat cutters.

N.G.A. also filed its comments on January 21, 2003 on the USDA request for emergency approval of a new information collection and detailed the burdensome and excessive costs. (The entire N.G.A. January 21, 2003 comments are included here for the record as well.) USDA recordkeeping cost estimates, which N.G.A. strongly believes are grossly underestimated, totaled $628 million for retailers, $340 million for food handlers, like wholesalers, and $1 billion for producers. The vast majority of these costs reoccur annually. As was noted, USDA underestimated the complexity of the recordkeeping system and allocated only two days for a food handler and 5 days for a retailer to set up a recordkeeping system. To maintain and generate the required records for food handlers was one hour per week and one hour per day for retailers.

Furthermore, the USDA estimate of one hour per day for retailers to generate and maintain the required records is wholly inadequate. N.G.A. retailers estimated that it would take substantially more hours to maintain the necessary records of the more than 500 covered items in stock that turn daily in inventory. This is even more true

depending on the degree and yet unspecified amount of product segregation USDA will require.

The guidelines require that the person that prepares, stores, handles or distributes a covered commodity for retail sale must keep the records on the country of origin for a period of at least two years. In addition, retailers must have records at the place of final sale that identify the country of origin of all covered commodities sold in that facility. Comprehensive records may be maintained by the retailer at points of distribution and sale, warehouses, or at central offices. The magnitude of the paperwork involved in generating, maintaining and storing the voluminous amount of records required for two years is a paperwork nightmare for retailers and the industry. Retailers and wholesalers have not had to maintain the records for country of origin information. This would be a new recordkeeping requirement. Seventy-five percent of retailers and wholesalers that responded to N.G.A.'s survey said that they would have to keep manual records to comply.

Retailers and wholesalers confirm that USDA missed the mark on recordkeeping and other burdens of this law. The burdens of this mandatory law, like many others, fall disproportionately on the small businesses that don't have the financial and other resources to comply. Perhaps one independent retailer simply said it best-"We simply can not afford to comply-We will close our independent store of 69 years!"

Labeling Complexity Is Unworkable

To illustrate the complexity of the law and the guidelines for labeling covered commodities, USDA provides the following examples based upon the multiple ways products are grown, and processed in a variety of countries. Pork products would have to be labeled "Country of Origin-United States" or "From Country X hogs, Raised and Slaughtered in the United States." For cattle, it could be "Born in Country X, Raised in Country Y, and Slaughtered in the United States." Mixed or blended products are even more complex. For example, it could be a mixture of product from three different countries and be labeled, "From Country X Cattle Slaughtered in the United States; Product of Country Y; and United States Product." These illustrations confirm why in the words of one retailer, "Packers and suppliers must furnish all data."

The cost and effect of this labeling complexity is readily apparent in meat and seafood departments where products may be blended. The guidelines indicate that the labeling for mixed or blended retail items must be listed by order of prominence. The example cited ground beef which would have to be labeled for each raw material source in descending order of prominence by weight. It is a common practice in various meat departments for retailers to customize products in response to individual consumer orders, but the products are not weighed before blending. This additional requirement is not necessary and burdensome. Similar requests are made in seafood departments whereas USDA describes multiple country of origin sources may be put in a single bag. The results of this complex labeling will require costly revisions to in store operations and computer labeling equipment, and place

additional demands on suppliers to appropriately label product. The end result is that consumers may find less individualized product and services being offered in key retail departments- less product variety and consumer choice.

Product Segregation Plan Is Unspecified

The guidelines provide that when similar covered commodities may be present from more than one country or different production regimes, a verified segregation plan must be in place. Retailers and wholesalers at N.G.A.'s February Government Relations meeting strongly questioned the scope and intent of USDA requirements for a verifiable segregation plan. Nothing in the guidelines specifies how a segregation plan will be interpreted by USDA. For example, bananas from two different countries can be received sequentially. Both bananas are properly labeled with a country of origin. Does that mean they cannot be in the same bin, or next to one another? Does the segregation plan require that they be separated in the back room even though they may be separately and independently boxed? Retailers should be given the maximum flexibility to merchandise products to consumers without being held accountable for unspecified and potentially arbitrary segregation requirements.

State Enforcement Has Potential For Administrative Abuse

The preamble to the voluntary guidelines indicates that surveillance, complaint response, retailer and violation tracking, and public disclosure of information obtained by the agency are all areas that will be addressed in the mandatory program. In N.G.A.'s meeting with USDA representatives, it was indicated that USDA anticipates entering into partnerships with the states for enforcement. Retailers and wholesalers strongly object to the delegation of enforcement powers to state regulatory agencies. It has been retailers' and wholesalers' experience that in these difficult times of state budget shortfalls that state agencies have used enforcement policies as revenue-raising mechanisms. For example, a state which does not have the funds appropriated and budgeted for enforcement of country of origin labeling could well use the monies raised from fines and enforcement to raise revenue not only for enforcement of country of origin but to make up for state agency budget shortfalls. This is especially so when violations can be levied up to $10,000 per violation.

Furthermore, USDA raises the issue of public disclosure of information. There does not appear to be any authorization within the statute for public disclosure of enforcement information.

Conclusion

N.G.A. strongly supports protecting our nation's food supply through thoughtful and prudent means. However, country of origin labeling is not a food safety issue and N.G.A. is opposed to USDA's country of origin guidelines that are clearly unworkable and costly. The adverse effects imposed on independent retailers, wholesalers and other industry small businesses will further erode the number of competitors in the food industry, to the detriment of consumer choice and marketplace diversity. N.G.A. members request USDA be attentive when the upcoming listening sessions are held to the effects on retailers, wholesalers, and other industry members that will be forced to comply.

Sincerely,

Thomas F. Wenning

Thomas F. Wenning
Senior Vice President and General Counsel

Tyson Foods, Inc.

April 29, 2003

Senator Jim Talent
Chairman, Subcommittee on Marketing, Inspection and Product Promotion
Committee on Agriculture
U.S. Senate
328-A Russell Senate Office Building
Washington, DC 20510

Dear Chairman Talent:

Thank you for conducting the field hearing last week in Joplin regarding mandatory country of origin labeling for red meat products. Since more than 60 percent of Tyson Foods, Inc.'s sales are from red meat products, we are very concerned about the implementation of this law and its negative consequences for producers, retailers and packers.

Although many good points were made at the hearing, we would like to rebut some of the inaccuracies presented. Thank you for the opportunity to comment on the record.

Myth: Cattle producers already maintain all the records they need to comply with mandatory meat COOL.

Some witnesses alleged that cattle producers currently maintain adequate born-in, raised-in records to meet COOL requirements. In our experience, this is not the case. While it is true that various producers, in the production chain (i.e., cow-calf operators, backgrounders or feeders) may have certain records, the producer selling the livestock to the packer does not have all of these records on each animal today. For example, at the hearing Mr. Thornberry stated that he had records of where his calves were treated by a vet *(vaccinated, castrated, etc.)*. However, Mr. Thornberry also noted that cattle could change hands four to five times before they are sold to a packer. Mr. Thornberry did not state whether he provides his records as a cow-calf producer to the producer who backgrounds the cattle, or whether the backgrounder gives copies of both his own records and Mr. Thornberry's records to the feedyard, or whether the feedyard collects all of these records on each animal and in turn provides them to the packer. If this were done, it would enable the packer to know where the cattle were born and fed during their entire life.

Unfortunately, much of the testimony at the hearing seemed to assume the person who sold the animal to the packer had the animal for its entire life and had these records. However, we believe this is an inaccurate assumption. In fact, our company has surveyed some of our feedyard suppliers known for keeping detailed records and asked them if they would be comfortable, based on the records they maintain, in certifying the place of birth and all locations where the animals they sold to Tyson/IBP had been raised. Their response is that they knew where they bought the cattle and where the cattle were fed since that purchase, but they did not possess any records showing where the animals had been born or raised prior to the time the feedyard purchased the animals. Although adequate records **may** exist with various producers in the production chain, the fact that cattle change hands so many times before they are

sold to a packer and the responses we got from some of the best feedyards in the country lead us to conclude that producers selling directly to packers do not currently maintain the records allowing them to verify where the animals were born and raised.

Compounding the challenge of an animal changing hands multiple before reaching a packer is the reality of, how cattle are mixed and placed in feedyards. The average cow herd in the U.S. is approximately 40 cows, and typically the calves are sold to someone who backgrounds the cattle *(raises the cattle on pasture, on cornstalks in a harvested field or on silage and hay in a feedyard)*. The backgrounder will typically take calves from various small cow-calf producers and put the calves together in one larger group. When the animals are marketed by the backgrounder to a feedyard, he may sort them into groups by sex, weight or breed. After he sorts the animals, each group may have animals from several different cow-calf herds. At the feedyard where animals are fed for slaughter the animals may be sorted again before being placed in a pen. By the time this is done, a pen of feedyard animals that are eventually sold to a packer may have animals from several different cow-calf herds that were born or raised in a number of various locations. This makes COOL very difficult, whether you ask the feedyard to self-certify with any accuracy or they actually keep audited records.

The Missouri Stockgrower's *(an affiliate of R-CALF)* position, as expressed by Mr. Thornberry, that the producer be able to self certify and that packers should not have any ability to audit his records is also troublesome. Self certification should not be allowed. If it is, consumers and the public will have no assurances about the origin of the product they buy. If Congress allows self-certification, it will become even clearer that this bill is primarily a mechanism to protect U.S. producers from foreign competition. Cow-calf producers have pushed for these types of barriers before; and at the end of the day it didn't help. Instead it hurt the industry *(we are still paying tariffs on beef exports to Mexico)*.

Myth: All we need to do is identify cattle crossing the border *(references were made to both branding and ear tagging)*

Although this was suggested as a way to relieve the burden from US producers of having to track animals, the law states the USDA cannot mandate any identification system *(does not differentiate between U.S. or foreign livestock)*. Also, we believe this would possibly violate trade laws, and at a minimum would encourage our trading partners to take actions against US livestock and meat products.

Myth: Studies show consumers will pay more for COOL meat

We do not believe there is any credible evidence that consumers will pay more for meat carrying mandatory country of origin labels. If, as a recent Colorado State University study suggests, one could truly add 10 to 25% to the retail price of beef and pork, and not diminish consumer demand for these products, we are certain that U.S. retailers would be offering county of origin labeled meats right now. But the retailers realize this value is not there. We believe the CSU study is flawed in that it only asked consumers to choose between meat labeled born/raised/ slaughtered in the U.S. versus product of unknown origin. However, this presents only a fraction of the options we believe consumers will have under mandatory COOL. For example, much of the beef and pork marketed in the U.S. comes from animals born in Canada and raised in either the U.S. or Canada. If the CSU study had asked people to evaluate product based on how it will be labeled under this law we think the results would be different. In fact, we would ask Senator Talent this question, if you were given three steaks to buy as follows:

1. Born in U.S./Raised in U.S./Slaughtered in U.S. at USDA inspected facility
2. Born in Canada/Raised in U.S./ Slaughtered in U.S. at USDA inspected facility; and
3. Born in Canada/Raised in Canada/Slaughtered in U.S. at USDA inspected facility

Would you be willing to pay $5/lb for the first steak if you could buy the other two steaks for $4/lb, or in other words, 25% more? The majority of product in question here is Canadian, and retailers and packers

believe consumers feel there is little difference between products from these two countries, especially when the USDA would inspect either.

Senator Talent we appreciate this opportunity to comment for the record and look forward to working with you and your colleagues on this issue.

Sincerely,

Archie Schaffer III
Senior Vice President-External Relations